Supreme Court, U.S.
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OFFICE OF THE CLERK

No. ____

In The
SUPREME COURT OF THE UNITED STATES

October Term, 2006

-◆-

NANCY D. JONAS,

Petitioner,

v.

BETTYANN L. TALLEY,

Respondent.

On Petition for Writ of Certiorari to The Supreme Court of South Carolina

PETITION FOR WRIT OF CERTIORARI

Nancy D. Jonas
Charles Street
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Petitioner, *pro se*

QUESTIONS PRESENTED

I. Whether the Supreme Court of South Carolina erred in tacitly affirming the decisive Orders filed February 29, 2000 and May 9, 2000 of the lower courts upon denial of certiorari December 6, 2006 in view of Davis v. Davis, 267 S.C. 508, 229 S.E.2d 247 (1976) cited in Wright Miller Cooper, interpreting 28 U.S.C. § 1446(d) which directly related to the Order of the Beaufort County Master-in-Equity, Special Circuit Judge Curtis L. Coltrane filed May 25, 2004 and suggests a further conflict of law and violation of due process and equal protection afforded by the 14th Amendment, U.S. Constitution.

II. Whether the United States Court of Appeals for the Fourth Circuit in their *per curiam* decision filed October 19, 2000 inappropriately rejected Petitioner's Motion to Recall Remittitur and Set Aside Order of The S.C. Court of Appeals Judge H. Samuel Stilwell dated May 8, 2000 which was pending in state court influencing.

III. Was the Remand to state court valid and if so what was the effective date.

IV. Did the U.S. District Court err in not defending its jurisdiction pursuant to 28 U.S.C. § 1446(d) and 28 U.S.C. § 1651, and proscribed duty by oath and affirmation to U.S. Constitution Article VI given an Emergency request for Stay directed to state court dated March 2, 2000 not protecting Petitioner's rights under 14th and 5th Amendments, U.S. Constitution.

V. Did the Magistrate Judge Robert S. Carr exceed his authority both as an Article I judge and in view of the conflict of authorities which existed in the Charleston Division and between the circuits.

INTRODUCTION

To the Honorable John G. Roberts, Jr., Chief Justice of the United States, and to the Honorable Associate Justices of the United States Supreme Court.

Nancy D. Jonas, petitioner, seeks a Writ of Certiorari to the Supreme Court of South Carolina from the ruling entered December 6, 2006.

PARTIES TO THE PROCEEDING

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OPINION BELOW

The Supreme Court of South Carolina entered its Order on December 6, 2006. Copy of this and related Orders appear in the Appendix.

JURISDICTIONAL GROUNDS

Jurisdiction to review by Certiorari a decision of the Supreme Court of South Carolina is provided under 28 U.S.C. § 1257.

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III Was the Remand to state court valid and if so what was the effective dated.

IV Did the U.S. District Court err in not defending its jurisdiction pursuant to 28 U.S.C. § 1651, and proscribed duty by oath or affirmation to U.S. Constitution Article VI given an Emergency Stay directed to the state court dated March 2, 2000 not protecting Petitioner's rights under the 14th and 5th Amendments, U.S. Constitution.

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UNITED STATES CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

SUPREMACY CLAUSE

This Constitution, and the laws of the United States which shall be made in the pursuance thereof, ... shall be the supreme law of the land and the judges in every state shall be bound thereby, any Thing in the Constitution or laws of any state to the contrary notwithstanding.

FOURTEENTH AMENDMENT, U.S. CONSTITUTION

Section 1. All persons born or naturalized in the United States, and subject to the laws thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE IV, U.S. CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable ... seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation.

FIFTH AMENDMENT, U.S. CONSTITUTION

No person shall be ... deprived of life, liberty, or property without due process of law.

28 U.S.C. § 636(b)(1)(a):

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, ... and to involuntarily dismiss an action.

(C) the magistrate shall file his proposed findings and recommendations and shall forthwith mail to all parties. Within ten days of being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided for by the rules of court.

(3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

28 U.S.C. § 1446(d):

Promptly after filing of such notice of removal of a civil action the defendant shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such state court, which shall effect the removal and the State court shall proceed no further until the case is remanded.

28 U.S.C.§ 1651 All Writs Act

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

42 U.S.C. § 1983:

Violations of civil rights under color of law

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully Prays that a Writ of Certiorari issue to review the Order of the Supreme Court of South Carolina entered in this proceeding on December 6, 2006.

STATEMENT OF THE CASE

This case came before the Supreme Court of South Carolina for review where several Orders of the lower state courts are relevant to the denial of certiorari on December 6, 2006.

The Respondent, Bettyann L. Talley, residing in Savannah, Georgia filed a Complaint in Beaufort County, South Carolina alleging she was owed typing fees. In her Complaint, she states that she completed the job but in fact Mrs. Talley did not finish the work that she agreed to perform telling the Petitioner that a social engagement had arisen. The work she did perform was not properly done and Petitioner had to hire and pay another typist on a Saturday to complete the brief for filing on Monday. Mrs. Talley was recommended as a legal typist because she had been employed by a law firm in Savannah for a number of years before retirement. However, she not only opted out of her agreement but the work she did was not that of a professional legal typist nor was it properly done as examples of this work in the Appendix show. In her "Initial Brief" filed in The S.C. Court of Appeals (filed out of time and not served on the Petitioner), Mrs. Talley made several erroneous statements that are not supported by the evidence saying that the Removal to the U.S. District Court occurred after the February 24, 2000 hearing conducted by then Master-in-Equity, Special Circuit Judge Thomas Kemmerlin, Jr. in order to claim that court had jurisdiction. This allegation was disputed in the Petitioner's Reply to the "Initial Brief".

The relief Judge Kemmerlin, Jr. granted was without legal authority but was affirmed by the Order of S.C. Court of Appeals Judge H. Samuel Stilwell dated May 8, 2000. The U.S. Court of Appeals for the Fourth Circuit in their *per curiam* decision decided October 19, 2000 denied the Motion for Recall of Remittitur and to Set Aside the Order of Judge

Stilwell pending in state court. The trial court Magistrate Judge George B. Brown was indicted for embezzlement in February 2000 raising the question that the judgment in the case was tainted. In support of this contention, other cases in Judge Brown's court raised similar questions. Mrs. Talley was typing information where it was discovered that an auto repair shop brought over six dozen cases in the Beaufort County Magistrate Court while being in business a short time.

In Mrs. Talley's case, a Rule 60, SCRCP Motion was filed on January 21, 2003 was not afforded a hearing. Petitioner's subsequent Motion to Recuse Judge Kemmerlin, Jr. was denied because nothing was found to be pending. Much of the state court action occurred without jurisdiction while the case was in federal courts. The mandate of 28 U.S.C. § 1446(d) was disregarded. When Judge Kemmerlin, Jr. ordered the former Beaufort County Clerk of Court Gloria Williams to file his February 24, 200 Order and wrote the *ex parte* postscript to Mrs. Talley, the Petitioner filed an emergency Request for Stay in the U.S. District Court dated March 2, 2000 that was not subject to the Anti-Injunction statute. Because the U.S. District Court did not enforce the federal statute 28 U.S.C. § 1446(d) mandating stay of state proceedings, the Petitioner applied to the Supreme Court of South Carolina for exercise of supervisory authority paying the $100.00 filing fee where the Supreme Court of South Carolina had interpreted the federal statute in Davis v. Davis, 229 S.E.2d 847 (1976). The Petitioner sought direct appeal to the Supreme Court remitting the $100.00 filing fee. The Supreme Court of South Carolina referred the case to The S.C. Court of Appeals where that state court attempted to obtain jurisdiction and requested that there be a full briefing knowing exclusive jurisdiction resided in federal court.

The U.S. Magistrate Judge Robert S. Carr filed an Order and Recommendation on March 6, 2000 exceeding his

authority as an Article I judge under 28 U.S.C. § 636, Long v. Lockheed Missile and Space Co., 783 F. Supp. 249 (D.S.C. 1992); Giangola v. Walt Disney World Co., 753 F. Supp. 148, 152 (D.N.J. 1990) and Brock v. Heckler, 612 F. Supp. 1348 (D.S.C. 1985); United States v. Saunders,641 F.2d 659, 663 (9th Cir. 1980);and Horton v. State Street Bank and Trust Co., 590 F.2d 430, 404 (1st Cir. 1979). In St. Joseph's Stockyards Co., 798 U.S. 38, 84 (1936) (Brandeis concurring) discusses legislative courts under Article I and the demands of Article VI that there be an opportunity to have some court decide whether an erroneous rule of law was implied and where judicial decisions are present, they must be decided by an Article III judge because of the requirements of the Constitution that there be a separation of powers and for due process considerations. These issues raise a substantial question. In Osborn v. Bank of the United States, 22 U.S. (9 Wheat) 247 (1824) Chief Justice Marshall writes for the Court, for purposes of Article III, there is a federal question whenever federal law is a potential ingredient of the litigation. In addition, the U.S. Magistrate Judge's assertion of authority raises a federal question because of the conflict between the circuits although the U.S. Court of Appeals for the Fourth Circuit has let stand Long for its position.

Other problems were evident when the U.S. Magistrate Judge asserted that for 28 U.S.C. § 1332 purposes that both parties were citizens of South Carolina.

The U.S. Magistrate Judge filed an Order and Recommendation November 10, 2004 but it was not served in accord with 28 U.S.C. § 636 or certified as the Clerk's Office did with prior orders. Notification of Remand on December 1, 2004 made Petitioner aware of the Order but was beyond the time for filing Objections. There has been no response from the Court related to Petitioner's Motion to Recall Remand on due process grounds.

Due process pursuant to the 14th Amendment, U.S. constitution has not been available. Rather meaningful access to the courts has been foreclosed raising the question of whether 42 U.S.C. § 1983 is applicable.

There are federal questions raised by the Order of the Supreme Court of South Carolina filed December 6, 2006. The Court review of the Orders of Master-in-Equity, Special Circuit Judge Thomas Kemmerlin, Jr. dated February 24, 2000; refused authority and duty pursuant to Rule 226(b)(1-4), SCACR; refused review of the Order of S.C. Court of Appeals Judge H. Samuel Stilwell dated May 8, 2000 despite applicable case law, Davis v. Davis, 229 S.E.2d 847 (1976). Rule 226, SCACR states review may be obtained where the lower courts have so far departed from the usual course; where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; where substantial constitutional issues are directly involved; and where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. The Order of the Master-in-Equity, Special Circuit Judge Curtis L. Coltrane dated May 25, 2004 rests on these actions of the appellate courts. Article VI, U.S. Constitution Supremacy Clause applies to the decision on review. Federalism concerns are mitigated by the Supreme Court of South Carolina's interpretation of the federal statute 28 U.S.C. § 1446(d) in Davis v. Davis, 229 S.E.2d 847 (1976).

One concludes that all review has been effectively foreclosed without consideration of the merits, evidence or state or federal law.

ARGUMENT I

Whether the Supreme Court of South Carolina erred in tacitly affirming the decisive Orders filed February 24, 2000 and May 9, 2000 of the lower courts upon denial of certiorari December 6, 2006 in view of Davis v. Davis, 267 S.E.2d 247 (1976), cited in Wright Miller Cooper, interpreting 28 U.S.C. § 1446(d) which directly related to the Order of the Beaufort County Master-in-Equity, Special Circuit Judge Curtis L. Coltrane filed May 25, 2004 and suggests a further conflict of law and a violation of due process and equal protection afforded by the 14th Amendment, U.S. Constitution.

The Supreme Court did not assume restricted jurisdiction when direct appeal pursuant to Rule 226, SCACR was requested by Petition. The Court was asked to act where the Master-in-Equity, Special Circuit Judge Thomas Kemmerlin, Jr. had so far departed from the normal judicial course acting contrary to federal law 28 U.S.C. § 1446(d) and a decision of the South Carolina Supreme Court interpreting that statute in Davis v. Davis, 267 S.C. 508, 229 S.E.2d 247 (1976), cited in Wright Miller Cooper. In response to a direct appeal, the Court may also act where substantial constitutional issues are directly involved and where a federal question is included. Instead of responding to these issues, the South Carolina Supreme Court did not act according to Article VI but referred the direct appeal to the S.C. Court of Appeals. That Court attempted to Proceed with full briefing and issued an erroneous Order dated May 8, 2000 assuming authority that

is conferred on an Article III U.S. District Court Judge. Despite evidence and law to the contrary, Judge H. Samuel Stilwell found that the Master-in-Equity, Special Circuit Judge Thomas Kemmerlin, Jr. had jurisdiction and that the removal was improper. 28 U.S.C. § 1446(b) provides that a removal may be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion or order or other paper (Beaufort Gazette) from which it may be ascertained that the case is one which is or has become removeable, Henniford v. American Motors Sales Corporation, 471 F. Supp. 328 (D.S.C. 1979). Furthermore, the decision of the Court of Appeals Judge H. Samuel Stilwell is in conflict with a prior decision of the Supreme Court.

The Supreme Court of South Carolina by denying certiorari on December 6, 2006 has not decided important questions of law related to the conduct of its courts; matters that are clearly within its jurisdiction as described in Rule 226, SCACR but not limited to those considerations governing review.

This action has affected other courts as evidenced by the recent action of the Beaufort County Magistrate Judge on February 12, 2007 where she declined jurisdiction believing that the Application for Stay pursuant to 28 U.S.C.§ 2101(f) should be taken to the Circuit Court or the Supreme Court of South Carolina. The statute states that the Application may be obtained in the trial court as a like Application was obtained from the Beaufort County Magistrate Judge A. Scott Dudley, Jr. on October 6, 2000 pursuant to 2101(f).

ARGUMENT II

Whether the United States Court of Appeals for the Fourth Circuit in their *per curiam* decision filed October 9,

2000 inappropriately rejected Petitioner's Motion to Recall Remittitur and Set Aside Order of The S.C. Court of Appeals Judge H. Samuel Stilwell dated May 8, 2000 which was pending in state court influencing outcome.

Following the *per curiam* decision of the United States Court of Appeals for the Fourth Circuit recommending the Motion be denied, The S.C. Court of Appeals subsequently denied the Motion on October 24, 2000. The United States Court of Appeals for the Fourth Circuit effectively influenced a matter that was pending in state court and for good cause based on decisional and statutory law should have been granted.

ARGUMENT III

Was the Remand to state court valid and if so what was the effective date.

The case was twice remanded to state court. In the first instance, the Order of the United States District Court Judge Sol Blatt, Jr. was filed June 21, 2000 remanding the case. Subsequently, Judge Sol Blatt, Jr. on July 21, 2000 ordered the case be recalled for transmittal to the United States Court of Appeals for the Fourth Circuit. In this instance, the remand was premature issuing before the end of the period when Notice of Appeal was filed.

In the second instance, on November 10, 2004, the Petitioner addressed an inquiry to United States District Court Judge Sol Blatt, Jr. about the status of Remand. Then the United States Magistrate Judge Robert S. Carr filed an Order and Recommendation dated November 10, 2004 which was not properly served on the Petitioner pursuant to 28 U.S.C. § 636(b)(1)(C) as done with other similar Orders.

Court Judge allowed the abuse of rights protected by federal law and the 14th Amendment, U.S. Constitution. Article VI, U.S. Constitution establishes the supremacy of federal law related to state action and that judges both federal and state shall be bound by the U.S. Constitution and laws of the land.

ARGUMENT V

> Did the U.S. Magistrate Judge Robert S. Carr exceed his authority as an Article I judge and in view of the conflict of authorities in the Charleston Division.

The duties of a U.S. Magistrate Judge are established by Act of Congress codified at 28 U.S.C. § 636 and are legislative Article I judges. Here, the U.S. Magistrate Judge issued an Order which is contrary to the established decisional law of his Court. Long v. Lockheed Missiles and Space Co., 783 F. Supp. 249 (D.S.C. 1992), Charleston Division. Chief Judge of the District Court, Hawkins, held that motion to remand was dispositive outside the power of a magistrate judge. "A motion to remand to state court was equivalent of a dismissal and thus was a 'dispositive motion' outside the power of a magistrate judge." Chief Judge Hawkins refers to the authority of 28 U.S.C.§ 636(b)(1)(a). The standard of review appears to apply to nondispositive motions. Quoting another case, the argument is that the motion to remand does not reach the merits of the underlying dispute. Chief Judge Hawkins supports his opinion citing Giangola v. Walt Disney World Co., 753 F. Supp. 148, 152 (D.N.J. 1990) where that court held that a motion to remand was dispositive. That court stated:

> "Perhaps no issue is so accurately described as a determination which

> will destroy or uphold the court's jurisdiction. A remand order is the equivalent of a dismissal. The magistrate's order thus sought to effect an "involuntary dismissal" of the action. As such, the magistrate was not empowered to hear the matter. Chief Judge Hawkins wrote in 1992, "The analysis of the court in Giangola is the preferred approach to this case because it combines both the statutory language with the practical effects of a dismissal from federal court." Further, there is no provision in the Local Rules of this Court governing this matter. See Local Rule 19, DSC. The U.S. Court of Appeals has let the nationally recognized Long case represent the 4th Circuit.

Therefore, the Magistrate Judge is without authority to issue an order of remand. Final determination and issuance of any enforceable court order must derive from an Article III judge who remains ultimately responsible for the exercise or declination of a federal court's jurisdiction, Brock v. Heckler, 612 F. Supp. 1348 (D.S.C. 1985). Article III, United States Constitution, requires that the powers delegated to federal magistrates by Congress, Article I, be limited to preserve the authority and integrity of Article III courts, United States v. Saunders, 641 F. 2d 659, 663 (9th Cir. 1980); Horton v. State Street Bank and Trust Co., 590 F. 2d 403, 404 (1st Cir. 1979).

The Supreme Court in its governance of Article III courts must be able to decide *de novo* all questions of law, constitutional issues and jurisdictional facts, St. Joseph's

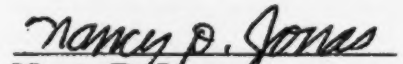
Stockyards Co. v. U.S., 798 U.S. 38, 84 (1936), (Brandeis, J. concurring). The Supreme Court has declared that "the supremacy of law" Article VI demands that there shall be an opportunity to have some court decide whether an erroneous rule of law was implied. Inherently, when judicial issues are present, they must be decided by an Article III judge. An Article III judge is required because of the text of the Constitution and separation of powers, but is also based on due process considerations and where a federal question is raised because of the conflict between circuits. A substantial question is raised under federal law and constitutional authority of the 14th Amendment.

CONCLUSION

For any of the issues of this Petition, all raising important questions of federal law some questions not settled by this Court, Certiorari should be granted to the Supreme Court of South Carolina.

Dated: March 5, 2007

Respectfully submitted,



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TRANSCRIPT of Circuit Court Hearing
on May 25, 2004 before former Master-in-Equity,
Special Circuit Judge Curtis L. Coltrane
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TRANSCRIPT of Magistrate Court Hearing 2101
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County Magistrate Judge Darlene Smith
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State of South Carolina
County of Beaufort

In Magistrate's Court
Case #9900825

Bettyann L. Talley
Plaintiff

Case#99-CP-07-1567

vs.

RETURN

Nancy D. Jonas
Defendant

The above Civil Case (99-0825) a summons and Complaint was heard as a bench trial by the undersigned at Beaufort Magistrates Court, Beaufort County Courthouse, Beaufort, South Carolina on September 13, 1999.

The Plaintiff testified she was hired by the defendant to provide typing at the rate of $5.00 per sheet and $1.00 a sheet for revisions. She testified the defendant did not provide her with any rules until she returned to make revisions. She did not provide a compute "disk". She presented a letter from the defendant dated February 5, 1999 in which she said she was truly grateful for the work done and wanted plaintiff to bill her for all revision charges and she would then send money which she hopes to do soon.

Defendant testified she paid the plaintiff for a previous job which was improperly done. She stated she gave instructions as to how the work was to be done and that she gave the plaintiff a computer disc, and the work was still not properly done.

I found for the plaintiff and told the parties I would issue a written judgment for the $616.00 if the bill was not paid within thirty (30) days.

Dated : 1/20/2000

Respectfully Submitted,
s/George B. Brown
Magistrate

State of South Carolina	)	In the Court of Common Pleas
County of Beaufort	)	Case No: 99-CP-07-1567
	)	
Betty Ann Talley,	)	
Plaintiff,	)	
	)	ORDER
	)	
Nancy D. Jonas,	)	
	)	

I scheduled the appeal in this case for February 24, 2000 at 9:00 a.m. The appellant failed to appear. Attached is a copy of the Return of the Trial Justice. Had the Appellate been present for the appeal it would have made no difference. The trial court ruled upon the case based upon a determination of facts. I cannot on the record before me change the facts.

APPEAL DISMISSED and Judgment of Judge Brown is restored and execution should issue to the Sheriff to seize the appropriate property of the Appellant to satisfy such judgment.

s/ Thomas Kemmerlin, Jr.
Master-in-Equity and Special
Circuit Judge for the Court of
Common Pleas of Beaufort County

Beaufort, South Carolina
This 24th day of February, 2000

State of South Carolina
County of Beaufort County

Judgment in a Civil Case

In the Court of Common Pleas
Betty Ann Talley
Plaintiff(s)

Case No. 99-CP-07-1567
Nancy D. Jonas
Defendant(s)

Check One:

[ ] Jury Verdict. This action came before the court for a
The issues have been tried and a verdict rendered.

[ ] Decision by the Court. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[x] Action Dismiss (Check Reason): [ ] Rule 12(b),SCRCP,
[ ] Rule 41 (a), SCRCP (Vol. Non Suit);
[ ] Rule 43(k), SCRCP (Settled); Other-_____
[ ] Action Stricken (Check Reason); [ ] Rule 40(j), SCRCP; [ ] Bankruptcy, [ ] Other-_____

IT IS SO ORDERED AND ADJUDGED: [ ] See attached order; [ ] Statement of Judgment by the Court:
Dated in Beaufort, South Carolina, this 29th day of February, 2000.

s/Thomas Kemmerlin, Jr.
Presiding Judge

This judgment was entered on the 29th day of February, 2000, and a copy mailed first class this ___ day of ____, 20__ to attorneys of record or to parties (when appearing pro-se) as follows:

_____
Attorney for the Plaintiff(s)

Pro-se
Attorney for the Defendant(s)
s/ Mildred Fields

United States District Court
District of South Carolina

FILED
MAR 06 2000
Larry W. Propes

Bettyann L. Talley Plaintiff, v. Nancy D. Jonas, Defendant.	Civil Action No.: 9:00-612-08AJ Order and Recommendation

The above-captioned case was removed to the United States District Court for the District of South Carolina by the *pro se* defendant in a state court action. The underlying case in state court was an action filed by the plaintiff in Magistrate's Court for Beaufort County. In her notice of removal, the defendant contends that the issues in the state court case are cognizable in this federal court under the diversity statute and under federal question jurisdiction.

Discussion

A defendant in a case in a state court may remove that case to a federal district court only if the state court could have been originally filed in a federal district court. 28 U.S.C. § 1441. Generally, a case can be originally filed in a federal district court if there is diversity of citizenship under 29 U.S.C. § 1332 or there if there is so-called "federal question" jurisdiction under 28 U.S.C. § 1331.

Various federal courts have held that the removal statutes are to be construed against removal jurisdiction, and in favor of remand. *See, e.g.*, Cheshire v. Coca-Cola Bottling Affiliated, Inc., 758 F. Supp. 1098, 1102, 190 U.S. Dist. LEXIS® 12565 (D.S.C. 1990) (collecting cases); and, 748 F. Supp. 434, 436, 1990 U.S. LEXIS® 14401 (W.D. VA. 1990).

It is well settled that a Notice of Removal must be filed by a defendant in the state court action within thirty days after the complaint in state court action is served or within thirty days *after* the case becomes removable. *See* 28 U.S.C. § 1446; and Heniford v. American Motors Sales Corporation, 471 F. Supp. 328 (D.S.C. 1979), *appeal dismissed*, 622 F. 2d 584 (4th Cir. 1980)[Table]. The original complaint in the above-captioned matter appears to have been filed in state court on September 13, 1999. Judgment was rendered in the state court case on October 14, 1999, and an appeal is pending before the Court of Common Pleas for Beaufort County. The case was removed by the defendant on February 23, 2000. The Notice of Removal was not timely filed. Moveover, there is no indication that the case became removable under Heniford, supra.

Although a federal court is not bound by the parties' characterization of a case or its appropriate parties, a district court must first look at the plaintiff's complaint filed in a state court to determine if "federal question" jurisdiction is present. Lyon v. Centimark Corporation, 805 F. Supp., at 334-335.

The complaint originally filed by the plaintiff in the Court of Common Pleas does not involve federal question jurisdiction. *See* Gully v. First National Bank in Meridian, 299 U.S. 109, 112-113 (1936). The complaint indicates that the state court case is for breach of contract.

In addition, the state court case could not have been filed in this federal district court because diversity of citizenship does not exist since the plaintiff and the defendants are all residents of the State of South Carolina. The diversity statute, 28 U.S.C. § 1332(s), requires complete diversity of the parties and an amount in controversy in excess of seventy-five thousand dollars ($75,000.00):

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between-

(1) citizens of different States[.]

28 U.S.C. § 1322. Complete diversity of parties in a case means that no party on one side may be a citizen of the same State as any party on the other side. *See* Owens Equipment & Erection Co. v. Kroger, 437 U.S. 365, 372-374 (1978). Both the plaintiff and defendants are citizens of South Carolina, so complete diversity of parties is lacking in this case. *See* 28 U.S.C. § 1332; and Straw bridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806).

The law is unclear whether an order or a Report and Recommendation should be entered in this case, *see* Long v. Lockheed Missiles and Space Co., 783 F. Supp. 249, 1992 U.S. Dist. LEXIS® 2033 (D.S.C. 1992). Most case law subsequent to Long v. Lockheed Missiles & Space Co. has indicated that the undersigned may enter an order of remand. *See, e.g.*, Vaquillas Ranch Company v. Texaco Exploration & Production, Inc., 844 F. Supp. 1156, 1160-1163, 1994 U.S. Dist. LEXIS® 6300 (S.D. Tex. 1994)(criticizing the rationale in Giangola v. Walt Disney World Co., 753 F. Supp. 148 (D.N. J. 1990), and distinguishing Long v. Lockheed Missiles & Space Co., supra; Holt v. Tonawanda Coke Corporation, 802 F. Supp. 866, 868, 1991 U.S. Dist. LEXIS® 20886 (W.D.N.Y. 1991); McDonough v. Blue Cross of Northeastern Pennsylvania, 131 F.R.D. 467, 1990 U.S. Dist. LEXIS® 10921 (W.D. Pa. 1990); and City of Jackson v. Lakeland Lounge of Jackson, Inc., 147 F.R.D. 122,124; 1993 U.S. Dist. LEXIS® 4348 (S.D. Miss. 1993)("This Court joins that group of courts which hold that a motion to remand is nondispositive and can be determined by a magistrate judge by final order.").

The United States Court of Appeals for the First Circuit in Unauthorized Practice of Law Committee v. Gordon, 979 F.2d 11, 12-13, 1993 U.S. App. LEXIS® 29613 (1st Cir. 1992) noted the existence of conflicting authorities, including Giangola v. Walt Disney World Co., supra, and Long v. Lockheed Missiles & Space Co., supra, but declined to resolve the issue:

> It is evident that the magistrate and the district court judge in the instant case treated the motion to remand as a nondispositive matter within the authority of the magistrate to determine by final order. While we note the existing and conflicting case law on this issue, we need not enter the fray at this time for we conclude that, in any event, we lack jurisdiction over this appeal.

Unauthorized Practice of Law Committee v. Gordon, supra, 979 F.2nd at 13. In light of the greater weight of recent authorities holding that an order of remand can be entered by a magistrate judge, the undersigned in entering an order. Even so, this order can be appealed to a United States District judge for review "under the clearly erroneous or contrary to law standard." Vaquillas Ranch Company v. Texaco Exploration & Production, Inc., supra, 844 F. Supp. At 1163. *See also* McDonough v. Blue Cross of Northeastern Pennsylvania, supra, 131 F.R.D. at 467.

IT IS THEREFORE ORDERED that this case is remanded to the Court of Common Pleas for Beaufort County.

If either party in the above-captioned case seeks to "appeal" this Order or file objections to this Order (if this Order is treated as a Report and Recommendation), the

office of the Clerk of Court shall forward this case file and any objections or appeal(s) to a United States District Judge. *See* Fed. R. Civ. P. 72(a). The aforementioned conflicting authorities indicate that a United States District Judge can review this order "under the clearly erroneous or contrary to law standard" or can treat this Order as a Report and Recommendation.

To avoid the problems that arose in City of Jackson v. Lakeland Lounge of Jackson, Inc., supra, 147 F.R.D. at 123-124, **IT IS ORDERED that the Office of the Clerk of Court shall not immediately certify this Order to the Court of Common Pleas.** If both parties in the above-captioned case fail to file an appeal of this Order or written objections to this Order (if this Order is treated as a Report and Recommendation) within fourteen (14) days after this Order is filed, the Office of the Clerk of Court shall then certify this Order to the Court of Common Pleas. If, however, either party files an appeal of this Order or written objections to this Order (if this Order is treated as a Report and Recommendation), the Office of the Clerk of Court at the end of the fourteen-day period, shall forward the case file and any appeal or objections to a United States district Judge for a final disposition. The parties' attention is directed to the important notice on the next page.

Respectfully submitted,
s/ Robert S. Carr
United States Magistrate Judge

Charleston, South Carolina
3/6/2000

United States District Court
District of South Carolina

Filed
Mar 06 2000
Larry W. Propes

Bettyann L. Talley)
Plaintiff,)
v.)
)
Nancy D. Jonas,)
Defendant.)
_____)

Civil Action No.: 9:00-612-08AJ

ORDER

The defendant is a *pro se* litigant. Her attention is directed to the following:

TO THE PLAINTIFF/PETITIONER:

You are ordered to always keep the Clerk of Court advised **in writing** (Post Office Box 835, Charleston, South Carolina 29402) if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to file something you are required to file within a deadline set by a District Judge or a Magistrate Judge, your case may be dismissed for violating this order. Therefore, if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address **and providing the Court with the docket number of all pending cases you have with this Court**. Your failure to do so will not be excused by the court. Put this order with your own record of this case so that you will not overlook your duty. If an attorney serves you by mail on behalf of the plaintiff, you also have to notify that attorney if your address is to be changed for mail purposes.

The defendant is, hereby, informed that if her address changes in the future, she must provide *her* own address. Hence, the Office of the Clerk of Court shall not enter any

change of address submitted by the plaintiff which directs that mail be sent to a person other than the plaintiff (unless, of course, that person is an attorney admitted to practice before this court who has entered a formal appearance).

(Standard change of address order, which is to issue in all *pro se* cases). For the plaintiff's future reference, if the plaintiff wants copies (of items that she files with the Clerk of Court) returned to her, she (the Plaintiff) must provide the copies and a self-addressed envelope with sufficient postage attached to the envelope.

IT IS SO ORDERED.

3/6/2000 s/Robert S. Carr
(*Date*) United States Magistrate Judge
Charleston, South Carolina

The South Carolina Court of Appeals

Bettyann L. Talley, Respondent,

v.

Nancy D. Jonas, Appellant.

The Honorable Thomas Kemmerlin
Beaufort County
Trial Court Case No. 1999-CP-07-1567

ORDER

Appellant appeals an order of the circuit court which dismissed her appeal of a magistrate's judgment and award of $616.00 for Respondent. Currently before the court is a motion entitled "Appellant's Motion to Stay Proceedings and Other Relief." Appellant asserts she "removed" the case to federal district court on February 23, 2000, the day before the scheduled hearing in circuit court. She maintains the circuit court was thus without jurisdiction to proceed with her appeal pursuant to 28 U.S.C. § 1446(d) (1994). However, 28 U.S.C. § 1446 (a) requires the notice of removal of a civil action be filed within thirty days after defendant's receipt of the initial pleading. Assuming Appellant could have ever properly removed this case, her attempt to do so was untimely as she filed the notice of removal several months after the magistrate's September 13, 1999 hearing on the action which was commenced with a summons and compliant. Thus it appears the circuit court properly asserted jurisdiction over Appellant's appeal. Appellant's motion is DENIED.

IT IS SO ORDERED.

s/ H. Samuel Stilwell, J.

Columbia, South Carolina
May 8, 2000
Cc: Nancy D. Jonas
Bettyann L. Talley

The Supreme Court of South Carolina

Bettyann L. Talley, Respondent,

v.

Nancy D. Jonas, Petitioner.

The Honorable Thomas Kemmerlin
Beaufort County
Trial Court Case No. 1997-CP-07-1567

ORDER OF DISMISSAL

The above entitled matter is pending in this Court on a Notice of Appeal requesting review of a decision of the Court of Appeals. Due to the failure of petitioner to pay the one hundred ($100.00) filing fee in the above matter, as provided for in Rule 226(c) of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned matter be and hereby is dismissed.

JEAN H. TOAL, CHIEF JUSTICE
s/ Daniel E. Shearouse
CLERK

Columbia, South Carolina
June 12, 2000
Cc: Ms. Bettyann L. Talley
Ms. Nancy D. Jonas (Regular and Certified Mail)
The Honorable Kenneth A. Richstad
The Honorable Gloria G. Williams

14UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Bettyann L. Talley Plaintiff, -vs- Nancy D. Jonas, Defendant.	) Civil Action No. 9:00-612-AJ)) **ORDER**))))

The matter is before the Court by a pro se Defendant, who removed this action to federal court. The record includes the "Order and Recommendation" of United States Magistrate Judge Robert S. Carr, in which report the magistrate judge ordered that this case be remanded to state court, or he recommended the same, depending on whether the undersigned determined to review his order under the clearly erroneous or contrary to law standard or treat it as a report and recommendation. The parties were given notice of the right to file objections to the Report and Recommendation, and of the right to appeal from his decision, and of the consequences for a failure to do so; in response, the Defendant filed objections with the Court.

The Defendant objects to the magistrate judge's authority to issue an order of remand. Giving the Defendant the benefit of the doubt, this Court will treat the March 6, 2000, Order as a Report and Recommendation.

The Report and Recommendation of the United States magistrate judge was made in accordance with 28 U.S.C. § 636 and the local rules of this district court concerning reference to a magistrate judge. See United States Magistrates, Local Rule 73.02, D.S.C.; Bowman v. Bordenkircher, 522 F.2d 209 (4th Cir. 1975). Under 28 U.S.C. § 636(b).

[a] judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Here, objections to the magistrate judge's report were filed, and the Court has conducted a de novo review of those parts of the magistrate judge's report to which objections were made. Having reviewed the record herein, as well as the applicable law, the Court concludes that the objections are without merit.

The magistrate judge found that the defendant untimely removed the action, and that there was no diversity of citizenship nor a federal question presented at the time of removal. The magistrate judge explained that the underlying state court action was for breach of contract, and that both the Plaintiff and Defendant are citizens of South Carolina.

In the objections, the defendant argues the she timely removed the action when it first became apparent that the action was removeable; she states that the paper was connected to an act of the circuit court which violated the South Carolina Rules of Civil Procedure." She appears to argue that a federal question is present, that is, whether the state courts have violated federal law regarding the jurisdiction and operation of the courts, and she argues that her equal protection rights have been violated.

This Court agrees with the magistrate judge's analysis that there is no diversity of citizenship and no federal question presented in the underlying action. The Defendant does not object to the magistrate judge's findings that the underlying action was for breach of contract and that both the Plaintiff and Defendant are citizens of South Carolina. The Defendant's complaints do not present a federal question; the federal question must arise from the merits of the Plaintiff's

lawsuit. Moreover, the Defendant did not explain the nature of the paper which prompted her removal, and it appears that her removal was untimely.

Accordingly, the magistrate judge's Report and Recommendation is adopted as the Order of this Court, and it is

IT IS SO ORDERED.

s/ Sol Blatt, Jr.
Senior U.S. District Judge

June 14, 2000
Charleston, S.C.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Bettyann L. Talley Plaintiff, -vs- Nancy D. Jonas, Defendant.	)	Civil Action No. 9:2000-612-8AJ **ORDER**

On June 26, 2000, this action was remanded to the Beaufort County Court of Common Pleas. On July 6, 2000, the pro se Plaintiff filed a Notice of Appeal in federal court. For purposes of the Appeal, this Court requests that the Clerk of Beaufort County Court of Common Pleas return the file to: United States District Court, Clerk of Court, Attention: Jane Wolper, P.O. Box 835, Charleston, SC 29402, so that it may be sent to the Clerk of the Fourth Circuit Court of Appeals.[1]

Accordingly, it is
ORDERED, that the Clerk of Court serve a copy of this Order on the Clerk of Beaufort County Court of Common Pleas.

IT IS SO ORDERED.

s/ Sol Blatt, Jr.
Senior U.S. District Judge

July 21, 2000
Charleston, S.C.

[1]The Clerk of the Fourth Circuit Court of Appeals has requested the file.

THE SOUTH CAROLINA COURT OF APPEALS

Bettyann L. Talley, Respondent,

v.

Nancy D. Jonas, Appellant.

The Honorable Thomas Kemmerlin
Beaufort County
Trial Court Case No. 1999-CP-07-1567

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of appellant to provide proof of service of the Record on Appeal in the above matter, as provided for in Rule 210 of the South Carolina Appellate Court Rules.

IT IS ORDERED that the above captioned appeal be and is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Beaufort County after (15) days, exclusive of the date of filing this Order.

By Kenneth A.Richstad, Clerk
For the Court

Columbia, South Carolina
August 10, 2000

cc: Nancy D. Jonas **Certified 7099 3400 0011 0563 4268**
Bettyann L. Talley
The Honorable Gloria Williams

State of South Carolina
County of Beaufort
In The Magistrate's Court
Civil Case No. 9900825

Bettyann L. Talley
409 Wilshire Blvd.
Savannah, GA 31419
Plaintiff(s)

vs.

Nancy Jonas
202 Tennis Villas
Fripp Island, SC 29920
Defendant(s)

NANCY JONAS, defendant desires staying of execution of judgment in above case as provided by Section 2101(f) US CODE, in the amount of $736.30. We, the undersigned sureties, do obligate ourselves jointly and severally as follows:

Name:	Nancy Jonas	me:
Bus Addr:	202 Tennis Villa Circle	Addr:
Amount:	$1,500.00	nt: $

I declare under penalty of perjury that the foregoing is true and correct:

s/ Nancy D. Jonas	No signature
(Signature of Surety)	(Signature of Surety)
Date: October 6, 2000	Date:

19a

ORDER

The above undertaking by surety(ies) is hereby approved by this court and a stay of execution is hereby issued.
Dated: October 6, 2000
s/ ASD, JR. Dated: 10-6-00
s/ A.S. Dudley, Jr.
Magistrate
Sealed

THE SOUTH CAROLINA COURT OF APPEALS

Kenneth A. Richstad
Clerk

Post Office Box 11629
Columbia, SC 29211
(803) 734-1890

Ida R. Carson
Deputy Clerk

October 25, 2000

Nancy D. Jonas
Post Office Box 1563
Beaufort, SC 29901

Re: Talley, Betty v. Jonas, Nancy

Dear Ms. Jonas:

The following Order has been endorsed on your motion to Recall the Remittitur and to Set Aside of the Honorable H. Samuel Stilwell, Entered on May 9, 2000 in the above entitled case on appeal.

"Denied.

s/ Carol Connor, J.

October 24, 2000."

Very truly yours,
Ida R. Carson
Deputy Clerk

IRC/ab
Cc: Bettyann L. Talley

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-1909

Bettyann L. Talley,

Plaintiff – Appellee,

versus

Nancy D. Jonas,

Defendant – Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Solomon Blatt, Jr., Senior District Judge. (CA-00-612-9-8)

Submitted: October 12, 2000 Decided: October 19, 2000

Before WILLIAMS AND MOTZ, Circuit Judges and HAMILTON, Senior Circuit Judge

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Dismissed by unpublished per curiam opinion.

Nancy D. Jonas, Appellant Pro Se. Bettyann L. Talley, Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

Nancy D. Jonas appeals the district's court's order remanding this case to state court. We have reviewed the record and the district court's opinion accepting the magistrate judge's recommendation and find that because the district court remanded this case for lack of subject matter jurisdiction, its order is unreviewable under 28 U.S.C. § 1447(d) (1994). See Thermtron Prods. v. Hermansdorfer, 423 U.S. 336, 343-46 (1976) (holding limited on other grounds by Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 711-715 (1996); Borneman v. United States, 213 F. 3rd 819, 824-26 (4th Cir. 2000). Accordingly, we dismiss the appeal. We deny Jonas' motion to recall the remittitur and set aside a state court order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

United States Court of Appeals
For The Fourth Circuit

Filed
November 20, 2000

No. 00-1909
CA-00-612-9-8

Bettyann L. Talley
Plaintiff – Appellee

v.

Nancy D. Jonas
Defendant – Appellant

On Petition for Rehearing and Rehearing En Banc

The appellant petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

as the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,

/s/ Patricia S. Connor
Clerk

United States Court of Appeals
For the Fourth Circuit

Filed
November 28, 2000

No. 00-1909
CA-00-612-9-8

Talley v. Jonas

MANDATE

The judgment of this Court dated 10/19/00 takes effect today.

PATRICIA S. CONNOR
CLERK

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Filed
December 5, 2000

No. 00-1909
CA-00-612-9-8

Bettyann L. Talley
Plaintiff – Appellee

v.

Nancy D. Jonas
Defendant – Appellant

ORDER

The Appellant has filed a motion to stay the Mandate pending application to the United States Supreme Court for a writ of certiorari.

The Court denies the motion.

For the Court – By Direction
/s/ Patricia S. Connor

CLERK

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

May 14, 2001

Ms. Bettyann L. Talley
409 Wilshire Boulevard
Savannah, GA 31419

Re: Nancy D. Jonas
v. Bettyann L. Talley
No. 00-1437

Dear Ms. Talley:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

s/ William K. Suter
William K. Suter, Clerk

State of South Carolina
County of Beaufort
In the Court of Common Pleas

Judgment in a Civil Case

Case No 99-CP-09-1567

Bettyann L. Talley
Plaintiff (s)

Nancy D. Jonas
Defendant (s)

03 Feb 18 PM 2:50
Beaufort County
Clerk of Court
Beaufort, SC

[ ] Jury Verdict. This action came before the court for a trial by jury. The issues have been tried a verdict rendered and
[ ] Decision By The Court. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
[ ] Action Dismissed. [ ] Rule 12(b), SCRCP; [ ] Rule 41(a), SCRCP, (Vol. Non-suit); [ ] Rule 43(k), SCRCP (Settled); [ ] Other _____
[ ] Action Stricken. [ ] Rule 40(j) SCRCP; [ ] Bankruptcy;
[ ] Binding Arbitration subject to right to restore, to confirm, vacate or modify arbitration award; [ ] Other

IT IS ORDERED AND ADJUDGED: [ ] See attached order;
[ ] Statement of Judgment by the Court

Defendant's motion for an order recusing Judge Kemmerlin is denied without a hearing. There is nothing pending before Judge Kemmerlin at this time.

Dated at Beaufort, South Carolina this 18th day of Feb, 2003.

s/ Jackson V. Gregory
PRESIDING JUDGE

This judgment was entered on this ___ day of ____, 20 ___,
and a copy mailed first class this ____ day of ____, 20___
to attorneys of record or the pro-se parties as follows

409 Wilshire Blvd	POB 1563
Savannah, GA 31419	Beaufort, SC 29901
_____ _____	_____
Attorney(s) for the Plaintiff(s)	Attorney(s) for the Defendant

s/ Melissa E. Johnson
Clerk of Court

State of South Carolina	)	In the Court of Common Pleas
	)	Judgment Roll 111455
County of Beaufort	)	Civil Action Number 1999-CP-
	)	07-1567
	)	
Bettyann L. Talley,	)	
Plaintiff,	)	
vs.	)	ORDER DENYING MOTION
	)	FOR STAY OF EXECUTION
Nancy D. Jonas,	)	
Defendant.	)	2004 May PM 4:32
	)	Beaufort County
		Clerk of Court
		Beaufort, SC

This case is before the undersigned on a "Notice of Motion and Motion for Emergency Stay of Execution" filed by the Defendant Nancy D. Jonas on May 20, 2004. A hearing was set for 2:00 o'clock, P.M. on May 25, 2004. Present at the hearing were the Defendant, Nancy D. Jonas, *pro se*, and Bettyann L. Talley, *pro se*.

The record reflects that this case began in the Magistrate's Court for Beaufort County, South Carolina. After a trial, Magistrate George Brown ruled in favor of Bettyann L. Talley, and granted her a judgment in the amount of Six Hundred Sixteen and no/1000 ($616.00) Dollars. The case was appealed to the Court of Common Pleas, and the Hon. Thomas Kemmerlin, Jr., issued his order on February 24, 2000, affirming Judge Brown's Order.

On February 23, 2000, Nancy D. Jonas filed a petition for removal with the United States District Court, seeking to remove the case to federal court. By an Order dated March 6, 2000, the Hon. Robert S. Carr recommended that the case be remanded for lack of jurisdiction in federal courts. The recommendation was adopted by an Order of the Hon. Sol

Blatt, Jr., dated June 14, 2000. An appeal was thereafter filed with the Fourth Circuit Court of Appeals. On October 19, 2000, the Fourth Circuit Court of Appeals issued its order affirming Judge Blatt. A petition for certiorari was filed with the United States Supreme Court, which was denied on May 14, 2001.

After Nancy D. Jonas filed her petition for removal to federal court on February 23, 2000, she appealed the order of Judge Kemmerlin to the South Carolina Court of Appeals. In her appeal, Ms. Jonas sought a stay of further proceedings in the state court action, based upon her argument that her removal petition deprived the state courts of jurisdiction. By an Order dated May 8, 2000, the Hon. H. Samuel Stilwell issued an Order denying the motion, and finding that the Court of Common Pleas properly exercised jurisdiction over the case. Ms. Jonas' appeal was ultimately denied by the South Carolina Supreme Court.1

Nancy D. Jonas now files her motion to stay an execution that has been issued in connection with the unsatisfied judgment in the case. Ms. Jonas contends that there are issues that have been overlooked by Judge Brown, Judge Kemmerlin, Judge Carr, Judge Blatt, The South Carolina Court of Appeals, The South Carolina Supreme Court, The Fourth Circuit Court of Appeals and The United States Supreme Court. To the extent that Ms. Jonas believes such issues to exist, the same should have been raised before the various courts that have issued rulings on this case in the past several years.2

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1 The foregoing is a brief summary of the various orders that have been entered. The file reflects other orders, all of which are adverse to the arguments put forth by Nancy D. Jonas.

2 Ms. Jonas also argues that the various orders that have been issued by the federal courts in this case are based on the wrong law. Whether or not this is true, Ms. Jonas should have made those arguments before the various federal courts that this case has been in front of at the time this case was before them.

It appears that this judgment is a final judgment. I see no basis to stay the execution that has been issued upon it.

Accordingly, the "Notice of Motion and Motion for Emergency Stay of Execution" of the Defendant Nancy D. Jonas is denied.

IT IS SO ORDERED.

s/ Curtis L. Coltrane,
Curtis L. Coltrane,
Master In Equity and Special Judge
For Beaufort County, South Carolina

Beaufort, South Carolina

This 25th day of May, 2004

THE SUPREME COURT OF SOUTH CAROLINA

ORDER

The following matters are dismissed pursuant to Key v. Currie, 305 S.C. 115, 406 S.E.2d 356 (1991), because no extraordinary reason exists to entertain them in this Court's jurisdiction:

1. Nancy D. Jonas, Petitioner, v. Bettyann L. Talley, Respondent. Petition for Original Jurisdiction of the South Carolina Supreme Court dated May 24, 2004. Case Tracking #200429521.
2. Anthony R. Taylor, Petitioner, v. State of South Carolina, Respondent. Notice of Default Judgment dated May 19, 2004. Case Tracking #200429510.
3. Sharona Stafford. Letter to the Chief Justice dated May 21, 2004. Case Tracking #200429519.
4. Douglas Clark. Letter to the Chief Justice dated May 18, 2004. Case Tracking # 200429474.
5. Harry N. Charles, II. Letter to the Chief Magistrate of the State and Court Officials of the State with Supporting Documents received May 26, 2004. Case Tracking #200429532.

6. Leon F. Small. Letter to the Chief Justice dated May 26, 2004. Case Tracking #200429583.
7. Curtis A. Thompson. Letter to the Chief Justice dated May 26, 2004. Case Tracking #200429576.
8. George M. Adams. Letter to the Clerk of Court dated May 25, 2004. Case Tracking #200429578.
9. Jason RyanBurr. Letter to Rachael Beckford dated May 25, 2004. Case Tracking #200429579.
10. Joseph M.L. Gardner, Petitioner, v. John Ozmint, Director, South Carolina Department of Corrections, Stan Burtt, Warden, Lieber Correctional Institution, Respondent. Petition for Writ of Mandamus received May 17, 2004. Case Tracking #200429603.

IT IS SO ORDERED.

Jean H. Toal C.J.

James E. Moore J.

John H. Waller, Jr. J.

E.C. Burnett, III J.

Costa M. Pleicones J.

Columbia, South Carolina
June 9, 2004

THE SOUTH CAROLINA COURT OF APPEALS

Kenneth A. Richstad
Clerk

Post Office Box 11629
Columbia, South Carolina 29211

V. Claire Allen
Deputy Clerk

1015 Sumter Street
Columbia, South Carolina 29211
Telephone: (803) 734-1890
Fax: (803) 734-1839
www.sccourts.org

June 22, 2004

First Class and Certified Mail -#70993400001102923396
Nancy D. Jonas
P.O. Box 1563
Beaufort, SC 29901

Re: Talley, Bettyann v. Jonas, Nancy

Dear Ms. Jonas:

The following Order has been endorsed on your Application for an Order for Supersedeas in the above entitled case on appeal.

"Denied.

s/ William L. Howard J.

June 16, 2004."

By copy of this letter, all interested parties are informed of the Court's action in this matter.

Very truly yours,
s/ Kenneth A. Richstad
CLERK

KAR/tg

Cc: Bettyann L. Talley

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Bettyann L. Talley, Plaintiff, v. Nancy D. Jonas, Defendant.	)))))))	C/A No. 9:04-22442-08AJ [formerly 99-825 Magistrate Court] Order and Recommendation jn Filed Nov 10 2004 Larry W. Propes, Clerk Charleston, SC

The above-captioned case was removed to the United States District Court for the District of South Carolina by the *pro se* defendant in a state court action. The underlying case in state court was an action filed by the plaintiff, Bettyann L. Talley, in the Magistrate's Court for Beaufort County in 1999. The *pro se* defendant, Nancy D. Jonas, has paid the $150.00 filing fee.

Ms. Jonas, in her Notice of Removal contends, *inter alia*, that: (1) she is removing this case pursuant to 28 U.S.C. § 1446, the 14th Amendment, 28 U.S.C. § 1331, and 42 U.S.C. § 1983; (2) the plaintiff is a citizen of Georgia and the defendant is a citizen of South Carolina; (3) the removal relates to a May 2, 2004 hearing before Master-in –Equity, Special Circuit Court Judge Curtis L. Coltrane; and (4) the District Court erred in "not declaring the U.S. Magistrate Judge's Order of Remand…contrary to law authorizing him to act and thus legally ineffectual…"

This matter, originally filed in state court in 1999, has a long procedural history. The case initially began in the Magistrate's Court for Beaufort County, South Carolina. After a trial, the state court Magistrate Judge ruled in favor of the plaintiff and granted her a $616.00 judgment for typing services performed. The case was appealed to a Court of

Common Pleas and was affirmed. The defendant then filed a petition for removal in this Court. The Honorable Robert S. Carr recommended that the case be remanded for lack of jurisdiction in the federal courts, and the recommendation was adopted by the Honorable Sol Blatt, Jr.. *See* Talley v. Jonas, C/A No. 9:00-612 (D.S.C. 2000). The Fourth Circuit Court of Appeals affirmed in an unpublished opinion, and the United States Supreme Court denied a petition for certiorari.

While the petition for removal was pending in the federal courts, Jonas appealed the decision of the Court of Common Pleas to the South Carolina Court of Appeals. She argued on appeal that the court should issue a stay in the state court case, since the removal deprived the state courts of jurisdiction. The Court of Appeals denied the motion for stay, finding that the Court of Common Pleas properly exercised jurisdiction over the state court case. Ms. Jonas' appeal of that decision was denied by the South Carolina Supreme Court.

Ms. Jonas subsequently filed a motion to stay an execution that had been issued in connection with the unsatisfied $616.00 judgment in the state court case. She argued that several issues had been overlooked by the various judges who heard the matter on both state and federal levels. TheMaster-in-Equity determined that, to the extent that Ms. Jonas believed such issues existed, she should have raised them before the various courts that issued those rulings, and he denied her motion to stay. This removal petition followed.

Discussion

A defendant in a case in a state court may remove that case to a federal district court only if the state court action could have been originally filed in a federal district court. 28 U.S.C. § 1441. Generally, a case can be originally filed in a federal district court if there is diversity of citizenship under 28 U.S.C. § 1332 or there if there is so-called "federal question" jurisdiction under 28 U.S.C. § 1331.

Various federal courts have held that the removal statutes are to be construed against removal jurisdiction, and in favor of remand. *See, e.g.*, Cheshire v. Coca-Cola Bottling Affiliated, Inc., 758 F. Supp. 1098, 1102, 1990 U.S. Dist. LEXIS® 14401 (W.D.Va. 1990).

It is well-settled that a notice of Removal must be filed by a defendant in the state court action within thirty days after the complaint in state court is served or within thirty days *after* the case becomes removable. *See* U.S.C. § 1446; and Heniford v. American Motors Sales Corporation, 471 F. Supp. 328 (D.S.C. 1979), appeal dismissed, 622 F.2d 584 (4th Cir 1980)[Table]. In this case, the original complaint was filed in 1999, approximately five years ago. Additionally, this is the second time the defendant has attempted to remove this case to federal court.

Although the Notice of Removal was clearly not timely filed by Ms. Jonas, a plaintiff's objection to an untimely removal by a defendant, in certain circumstances, is a waivable defense *when a federal district court otherwise would have subject-matter jurisdiction.* In other words, if there is federal question jurisdiction or if there is diversity of citizenship, a plaintiff must file a motion to remand within thirty days after notice if Removal was filed. 28 U.S.C. § 1447(c). If a plaintiff does not file a motion to remand within thirty days of the filing of the Notice of Removal, the plaintiff waives all procedural defects in the removal. In Re Shell Oil Co., 932 F.2d 1523, 1527 & nn. 6-7, 1991 U.S. App. LEXIS® 10787 (5th Cir. 1991).

Even so. Applicable case law and statutory law, including 28 U.S.C. § 1447(c), provide that subject-matter jurisdiction cannot be conferred by estoppel, waiver, or consent. *See* Buchner v. Federal Deposit Insurance Corp., 981 F.2d 816, 818, 1993 U.S. App. LEXIS® 990 (5th Cir. 1993)("Although parties may waive their rights to remove a case or to contest the removal procedure, they may neither confer subject

matter jurisdiction on the district court nor strip it of such jurisdiction by agreement or waiver.") and Page v. Wright, 116 F.2d 449, 451-455 (7th Cir. 1940), *cert dismissed* [on motion of counsel for the petitioner], 312 U.S. 710 (1941). *Cf.* Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 379 & n.15 (1981)(jurisdictional ruling cannot be made prospective only). As a result, even if a plaintiff fails to object to a Notice of Removal within thirty days after the Notice of Removal is filed, a federal district court must still remand the case to state court if there is no federal question jurisdiction or diversity jurisdiction. In the case at bar, even if the plaintiff does not object to the Notice of Removal within the time limit established by 28 U.S.C. § 1447 (c), this court lacks subject matter jurisdiction over the issues presented. *See* Williams v. AC Spark Plugs Division of General Motors Corporation, 985 F.2d 783, 786, 1993 U.S. App. LEXIS® 4440 (5th Cir. 1993), and 28 U.S.C. § 1447(c).

Although a federal court is not bound by the parties' characterization of a case or its appropriate parties, a district court must first look at the plaintiff's complaint filed in a state court to determine if "federal question" jurisdiction is present. Lyon v. Centimark Corporation, 805 F. Supp. 333, 334, 1992 U.S. Dist. LEXIS® 17312 (E.D.N.C. 1992). District courts are authorized to disregard such characterizations only to avoid "unjust manipulation or avoidance of it jurisdiction". Lyon v. Centimark Corporation, 805 F. Supp. at 334-335.

The complaint originally filed by the plaintiff in the Magistrate Court of Beaufort County does not involve federal question jurisdiction. *See* Gully v. First National Bank in Meridian, 299 U.S. 109, 112-113 (1936). The complaint is a simple breach of contract case, filed to collect a debt, totaling approximately $600.00. As a result, the complaint filed by the plaintiff does not raise a federal question, and could not have been filed in this federal district court because the

amount in controversy does not meet the minimum requirements of the diversity statute.

The law is unclear whether an order or a report and Recommendation should be entered I this case, *See* Long v. Lockheed Missiles & Space Co., 783 F. Supp. 249 (D.S.C. 1992). Most case law subsequent to Long v. Lockheed Missiles & Space Co. has indicated that the undersigned may enter an order of remand. *See, e.g.*, Vaquillas Ranch Company v. Texaco Exploration & Production, Inc., 844 F. Supp. 1156, 1160-1163, 1994 U.S. Dist. LEXIS® 6300 (S.D. Tex. 1994)(criticizing the rationale in Giangola v. Walt Disney World Co., 753 F. Supp. 148 (D.N.J. 1990), and distinguishing Long v. Lockheed Missiles & Space Co., supra); Holt v. Tonawanda Coke Corporation, 802 F. Supp. 8666,868, 1991 U.S. Dist. LEXIS® 20886 (W.D.N.Y. 1991); McDonough v. Blue Cross of Northeastern Pennsylvania, 131 F.R.D. 467, 1990 U.S. Dist. LEXIS® 10921 (W.D. Pa. 1990); and City of Jackson v. Lakeland Lounge of Jackson, Inc., 147 F.R.D. 122, 124, 1993 U.S. Dist. LEXIS® 4348 (S.D. Miss. 1993)("This Court joins that group of courts which hold that a motion to remand is nondispositive and can be determined by a magistrate judge by final order.")

The United States Court of Appeals for the First Circuit in Unauthorized Practice of Law Committee v. Gordon, 979 F.2d 11, 12-13, 1992 U.S. App. LEXIS® 29613 (1st Cir. 1992), noted the existence of conflicting authorities, including Giangola v. Walt Disney World Co., supra, and Long v. Lockheed Missiles & Space Co., supra, but declined to resolve the issue:

It is evident that the magistrate and the district court judge in the instant case treated the motion to remand as a nondispositive matter within the authority of the magistrate to determine by final order. While we note the existing and conflicting case law on this issue, we need not enter the fray at this time for we conclude that, in any event, we lack

jurisdiction over this appeal Unauthorized Practice of Law Committee v. Gordon, supra, 979 F.2d at 13.

In light of the greater weight of recent authorities holding that an order of remand can be entered by a magistrate judge, the undersigned is entering an order. Even so, this order can be appealed to a United States District Judge for review "under the clearly erroneous or contrary to law standard." Vaquillas Ranch Company v. Texaco Exploration & Production, Inc., supra, 844 F. Supp. at 1163. *See also* McDonough v. Blue Cross of Northeastern Pennsylvania, supra, 131 F.R.D. at 467.

IT IS THEREFORE ORDERED that this case is remanded to the Court of Common Pleas for Beaufort County. If either party in the above-captioned case seeks to "appeal" this Order or file objections to this Order (if this Order is treated as a Report and Recommendation), the Office of the Clerk of Court shall forward this case file and any objections or appeal(s) to a United States District Judge. *See* Fed. R. Civ. P. 72(a). The aforementioned conflicting authorities indicate that a United States District Judge can review this order "under the clearly erroneous or contrary to law standard" or can treat this Order as a Report and Recommendation.

To avoid the problems that arose in City of Jackson v. Lakeland Lounge of Jackson, Inc., supra, 147 F.R.D. at 123124, **IT IS ORDERED that the Office of the Clerk of Court shall not immediately certify this Order to the Court of Common Pleas for Beaufort County.** If both parties in the above-captioned case fail to file an appeal of this Order or written objections to this Order (if this Order is treated as a Report and Recommendation) within fourteen (14) days after this Order is filed, the Office of the Clerk of Court shall then certify this Order to the Court of Common Pleas for Beaufort County. If, however, either party files an appeal of this Order or written objections to this Order (if this

Order is treated as a Report and Recommendation), the Office of the Clerk of Court, at the end of the fourteen-day period, shall forward the case file and any appeal or objections to a United States District Judge for a final disposition.

The plaintiff is a *pro se* litigant. The plaintiff's attention is directed to the following important notice:

TO THE PLAINTIFF:

You are ordered to always keep the Clerk of Court advised **in writing (Post Office Box 835, Charleston, South Carolina 29402)** if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to file something you are required to file within a deadline set by a District Judge or a Magistrate, your case may be dismissed for violating this order. Therefore, if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address. Your failure to do so will not be excused by the court.

Put this order with your own record of this case so that you will not overlook your duty. If an attorney serves you by mail on behalf of a defendant or a respondent, you also have a duty to notify that attorney if your address is to be changed for mail purposes.

The parties' attention is directed to the important notice on the next page.

s/ Robert S. Carr
Robert S. Carr
United States Magistrate Judge

Charleston, South Carolina
(Date) 11/10/06 (original-7 pages)

THE SOUTH CAROLINA COURT OF APPEALS

Kenneth A. Richstad
Clerk

V. Claire Allen
Deputy Clerk

Post Office Box 11629
Columbia, South Carolina 29211

1015 Sumter Street
Columbia, South Carolina 29201

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August 30, 2004

Nancy D. Jonas ***First Class and Certified Mail Receipt # 7099 3400 0011 0292 3136***
P.O. Box 1563
Beaufort, SC 29901

Re: Talley, Bettyann v. Jonas, Nancy

Dear Ms. Jonas:

The following Order has been endorsed on your Motion for Rehearing in the above entitled case on appeal.

"Petition for Rehearing Denied.

s/ Kaye G. Hearn C.J.

s/ Thomas E. Huff .J.

s/ John W. Kittredge .J.

August 18, 2004."

By copy of this letter opposing is informed of this Court's action in this matter.

Very truly yours,

s/ Connie Lucius
Connie Lucius
Docketing Specialist

KAR (initialed) /cl

cc: Bettyann L. Talley

THE SOUTH CAROLINA COURT OF APPEALS

Bettyann L. Talley, Respondent,

v.

Nancy D. Jonas, Appellant.

The Honorable Curtis L. Coltrane
Beaufort County
Trial Court Case No. 1999-CP-07-01567

ORDER OF DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of appellant to serve and file the Appellant's Initial Brief and Designation of Matter in the above matter, as provided for in Rule 208 and 209 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Beaufort County after fifteen (15) days, exclusive of the date of filing this Order.

BY s/Kenneth A. Richstad CLERK
For the Court

Columbia, South Carolina
January 5, 2005

Cc: Nancy D. Jonas (First Class and Certified Mail-#7002 3150 0005 0368 7724)

Bettyann L. Talley
The Honorable Elizabeth M. Smith

THE SOUTH CAROLINA COURT OF APPEALS

Kenneth A. Richstad
Clerk

Post Office Box 11629
Columbia, South Carolina 29211
1015 Sumter Street
Columbia, South Carolina 29211
Telephone: (803) 734-1890
Fax: (803) 734-1839

February 12, 2005

First Class and Certified Mail-# 7002 3150 0005 0368 7830
Nancy D. Jonas
P.O. Box 1563
Beaufort, SC 29901

Re: Talley, Bettyann v. Jonas, Nancy

Dear Ms. Jonas:

The following Order has been endorsed on your motion for Leave to Reinstate and Motion to Reinstate in the above entitled case on appeal.

"Granted.

Kaye G. Hearn C.J.
For The Court

By s/Kenneth A. Richstad
Clerk
February 10, 2005."

Please be advised the Appellant's Initial Brief and Designation of Matter is due to be served and filed on or before February 25, 2005.

Very truly yours,
s/Talicia R. Green
Talicia R. Green
Docketing Specialist

KAR/tg
Cc: Bettyann L. Talley

UNPUBLISHED OPINIONS

This Opinion has no precedential value. It should not be cited or relied on as precedent in any proceeding except as provided by Rule 239(D)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Bettyann L. Talley
Respondent,
v.

Nancy D. Jonas,
Appellant.

Appeal From Beaufort County
Curtis L. Coltrane, Master In Equity and
Special Circuit Judge

Unpublished Opinion No. 2005-UP-519
Submitted August 1, 2005–Filed September 14, 2005

AFFIRMED

Nancy D. Jonas, of
Beaufort for
Appellant.

Bettyann L. Talley, of
Savannah, for
Respondent.

PER CURIAM: Nancy D. Jonas appeals from the master's order denying her motion for stay of execution of a judgment. She argues the master erred in denying her motion to stay execution of an unsatisfied judgment. She alleges errors from several court proceedings, including some in federal court. We affirm[1]
pursuant to Rule 220(b)(2), SCACR, and the following authorities:

1. The master did not err in denying Jonas's motion to stay execution: Rule 225, SCRCP (generally, a stay of execution is unnecessary as an appeal stays the proceedings). However, a judgment directing the payment of money is an exception to this rule. See Rule 225(b)(1), SCRCP (providing exception to the general rule of stays); S.C. Code Ann. § 18-9-130 (Supp.2004) (explaining notice of appeal does not stay certain matters including money judgments); see Barnes v. Barnes, 108 S.C. 1, 93 S.E. 2d 425 (1917) (finding a judge could stay execution of a decree until the party could seek permanent relief); see also generally B.F. Hunt v. Smith, 18 S.C. Eq. 277 (1 Rich. Eq. 1845) (describing a stay of execution as an injunction); MailSource, LLC v. M.A. Bailey & Associates, 356 S.C. 363, 367, 588 S.E. 2d 635, standard for review of temporary injunctive relief).
2. The other issues Jonas raises are not properly before this court. Rule 203(e)(3), SCACR (providing the form and content of a notice of appeal, which includes information about the order from which the appeal is taken).

Furthermore, to be preserved for appellate review, an issue must have been raised to and ruled upon by the trial court. Lucas v. Rawl Family Ltd. P'ship, 359 S.C. 505, 511, 598 S.E.2d 712, 715 (2004); see also Harkins v. Greenville County, 340 S.C. 606, 533 S.E.2d 886 (2000). Also, matters previously ruled upon as final judgments cannot be relitigated. Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 183, 437 S.E. 2d 130,131 (Ct. App. 1993) (providing the

elements of res judicata, which prevents the relitigation of issues previously decided by the parties); Rule 60, SCRCP (providing relief from judgment).

AFFIRMED.

HEARN, C.J. and STILWELL and KITTREDGE, JJ., concur.

---

[1]We decide this case without oral argument pursuant to Rule 215, SCACR.

THE SUPREME COURT OF SOUTH CAROLINA

ıniel E. Shearouse
erk of Court

enda F. Shealy
ıief Deputy Clerk

Post Office Box 11330
Columbia, South Carolina 29211
(803) 734-1080

Fax (803) 734-1499

December 6, 2006

REGULAR AND CERTIFIED MAIL

:. Nancy D. Jonas
arles Street
). Box 1563
aufort, SC 29901

: Talley, Bettyann v. Jonas, Nancy
1999-CP-07 01567

ar Ms. Jonas:

The Court has issued the following Order on your Petition for Writ of Certiorari ir above entitled matter:

"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

:ember 6, 2006."

By copy of this letter we are advising all interested parties of the action of the Cc this matter.

Very truly yours,
Daniel E. Shearouse
CLERK

DES/dmh

THE SOUTH CAROLINA COURT OF APPEALS

Kenneth A. Richstad
Clerk

V. Claire Allen
Deputy Clerk

Post Office Box 11629
Columbia, South Carolina 29211

1015 Sumter Street
Columbia, South Carolina 29201
Telephone: (803) 734-1890
Fax: (803) 734-1839
www.sccourts.org

December 8, 2006

REMITTITUR

The Honorable Elizabeth M. Smith
102 Ribaut Road Rm 208
PO Box 1128
Beaufort, SC 29901-1128

Re: Talley, Bettyann v. Jonas, Nancy
1999-CP-07-01567

Dear Mrs. Smith:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,
s/ Kenneth A. Richstad
Clerk of Court

KAR/tf

Cc: Nancy D. Jonas
Bettyann L. Talley

STATE OF SOUTH CAROLINA 9900825
CIVIL CASE NUMBER

COUNTY BEAUFORT

ORDER OF FINAL DISPOSITION

Bettyann L. Talley
409 Wilshire Blvd.
Savannah, GA 31419
(912) 925-7804

Plaintiff(s)

Vs.

Nancy D. Jonas
202 Tennis Villas/POB 1563
Fripp Island, SC 29901

Defendant(s)

A motion hearing was held on February 12, 2007 for civil case **9900825**. The Court's finding:

Motion Denied.

IT IS SO ORDERED.

s/ Darlene Smith
Judge Darlene Smith

Beaufort County
Beaufort Magistrate
104 Ribaut Road Post Office Box 2207
Beaufort, SC 29901-2207
Phone: (843) 470-5210 Fax: (843) 470-5208

February 14, 2007

BETTYANN L. TALLEY
409 Wilshire Boulevard
Savannah, Georgia 31419
SSN 000-00-0000

January 12, 1999

Nancy D. Jonas
Post Office Box 1563
Beaufort, South Carolina 29901

For typing services $516.00

Minor revisions (January 5, 1999) @ $1.00 = $16.00

January 12, 1999 13 pages @ $5.00 = $ 65.00

January 14-15 87 pages @ $5.00 = $435.00

BETTYANN L. TALLEY
409 Wilshire Boulevard
Savannah, Georgia 31419
SSN 000-00-0000

January 16, 1999

Nancy D. Jonas
Post Office Box 1563
Beaufort, South Carolina 29901

For typing services		$556.00
Minor revisions (January 5, 1999)	@ $1.00 =	$ 16.00
January 12, 1999 13 pages @ $5.00	=	$ 65.00
January 14-15, 1999 87 pages @ $5.00	=	$435.00
January 16, 1999 40 revised pages (at least)	@ $1.00 =	$ 40.00

THANK YOU !

I expected to hear from you with payment for my services. There should be charges for revision time, too, but I will forego those. Please let me hear from you with a check. Thank you.

TABLE OF AUTHORITIES

Cases Cited *Page*

Mears v. Mears, 287 S.C. 168, 337 S.E.2d 204(1985) .....

Smith v. Saye, 131 S.C. 378, 127 S.E. 568 (1925)

Anderson v. Sousa, 38 Cal.2d 825, 243 P.2d 49

Boddie v. Connecticut, 401 U.S. 371, 379 (1971) .....

Brotherhood of Railroad Trainmen v. Virginia, 377 U.S. 1 (1964) .....

Brown v. Piedmont Mfg. Co., 109 S.E. 343, 96 S.E. 138 (1917) .....

Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821) .....

Commentaries, 129-139 (1765) .....

Cooper v. Aaron, 358 U.S. 1 (1958)

Daisy Outdoor Advertising Co., Inc. v. Abbott, Op. No. 24463 filed July 15, 1996 .....

(not alphabetized, did not generate page numbers, did not underline cases etc. as sample illustrated)

TABLE OF CONTENTS TO APPENDIX

APPENDIX A	Magistrate Judgment, dated October 16, 1996, oral
APPENDIX B	Magistrate Judgment, dated August ?(9), 1997 (hand-Corrected)
APPENDIX C	Order of the Circuit Court Judge by Special Appointment, dated August 12, 1997
APPENDIX D	Magistrate's purported Return, dated June 12, 1997, presented at appellate trist (trial) in Circuit Court on August 12, 1997
APPENDIX E	Letter, Beaufort County Sheriff's Office, dated September 14 (19), 1997 (hand-corrected)
APPENDIX F	Order of Magistrate to Extend Time for Appeal (to October 12, 1997, undated

State of South Carolina

County of Beaufort

Civil Case Number
In the Magistrate's Court
99-825

Bettyann L. Talley
Plaintiff
409 Wilshire Blvd.
Street Address
Savannah GA 31419
City State Zip Code
(912) 925-7804
Telephone

vs.

Complaint

Nancy D. Jonas
P.O. Box 1563 Beaufort 29901
Defendent
202 Tennis Villas
Street Address
Fripp Island SC 29920
City State Zip Code

Telephone

I, Bettyann L. Talley, the Plaintiff in this civil action, makes the following claims:

1. I believe that the Defendant, Nancy D. Jonas is a resident of Beaufort County, and resides at 202 Tennis Villas, Fripp Island SC which is within Judge Brown 's magisterial jurisdiction.

2. I make this complaint based on the following:
Typing services were performed by Mrs. Talley for Ms. Jonas in December for which Mrs. Talley was paid. More typing was requested in January and was completed. The

attached statements and letter acknowledging debt, represent the services. After February response of Ms. Jonas, Mrs. Talley has heard nothing from Ms. Jonas – no payment – nothing.

(Attach supplement if necessary)

3. I believe, because of the information, that I am entitled to and do request a judgment of $616.00 and/or other relief as below requested

plus costs of filing and travel expenses to file.

including any costs resulting in this action.

I state under penalty of perjury that the above is correct and truthful.

s/Bettyann L. Talley

BEAUFORT GAZETTE

..... "Also on Monday, County Council voted 6-5 to consent to Pre-Trial Intervention for former Magistrate George Brown.

..... Brown was indicted in February on charges of embezzling more than $12,000.00 from the Magistrate's office. He later resigned."

February 2000

Wed Feb 23 14:57:52 2000

UNITED STATES DISTRICT COURT
CHARLESTON, SC

Receipt No.	200 10190
Cashier	hilley
Check Number	90.09
DO Code	Div. No.
4671	2

Sub Acct	Type	Tender	Amount
1:086900	N	1	60.00
2:510000	N	2	90.00
Total Amount		$	150.00

9:99-612-08AJ FILING FEE

NANCY JONAS PO BOX 1563 BEAUFORT, SC 29901

CERTIFICATE OF SERVICE

I, Nancy D. Jonas, do certify that Notice of Removal and Complaint, along with Appendix were served this 23rd day of February, 2000, upon the following:

The Honorable Larry W. Propes
Clerk of Court
U.S. District Court
85 Broad Street, P.O. Box 835
Charleston, SC 29402
2 copies hand-delivered with
fee paid $150.00

FEB 23 4:31
CLERK OF COURT

The Honorable Gloria Williams
Clerk of Court
102 Ribaut Road (Gov't Center)
Beaufort, SC 29902
1 copy hand- delivered
& UPS overnight
before 8:30 a.m.

Case No. C/A 99-CP-07-1567

Trial – February 24, 2000
before Judge Kemmerlin

Office of the Magistrate
P.O. Box 2207
Beaufort, SC 29901
1 copy hand-delivered via U.S.
mail 1st class postage affixed to
box post office

Case No. 9900825
Trial Judge: George B. Brown

MASTER IN EQUITY
Thomas Kemmerlin, Jr.
P.O. Drawer 1228
Beaufort, South Carolina 29901
(843) 470-5295

Date: February 24, 2000
Re: Bettyann L. Talley vs. Nancy D. Jonas
Number: 99-CP-07-1567

Honorable Gloria Williams
Clerk of Court
Beaufort County Courthouse
Beaufort, South Carolina 29902

Dear Gloria:

Please file the attached order. By copy of this memo, I send copies of the order to the persons below. This should serve as their notice of filing.

Thank you for your assistance.

Yours truly,
s/ Tom
Thomas Kemmerlin,Jr.

TKjr:lh
Enclosure

Copy: Ms. Bettyann L. Talley
Ms. Nancy D. Jonas

P.S. to Ms. Talley: At the time I heard your appeal, you asked me about some papers served upon you purporting to be a suit in Federal Court. I told you I thought it was just the ravings of a disappointed litigant who was foolish enough to

think she knew some law. Now after reading the papers, a copy of which I received this morning, I must point out that while I think it is just so much foolishness which I would toss out of Court on my our motion if I were the Federal Judge, I am not the Federal Judge, and perhaps you should seek counsel. I should not have said anything on the subject to you.

s/ Thomas Kemmerlin, Jr.

(Ms. Jonas' copy did not contain these remarks)

CUSTOMER'S RECEIPT
Do not send this receipt for Payment
Keep it for Your Records

85129274160	000321	299023	*100*00
Serial number	Yr/Mo/Day	Post Off	Dollars & Cents

Pay To: The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of S.C.
P.O.Box 11330
Columbia, SC 2921101330

Check Writer Imprint Area $$100&00cents

From: N.D. Jonas
P.O. Box 1563
Beaufort, SC 29901

Notice of Appeal $100.00 filing fee

The Supreme Court of South Carolina

Daniel E. Shearhouse
Clerk of Court

Post Office Box 11330
Columbia, South Carolina 29211

Brenda F. Shealy
Deputy Clerk

(803) 734-1499
Fax (803) 734-1498

May 23, 2000

REGULAR AND CERTIFIED MAIL

Ms. Nancy D. Jonas
Charles Street
P.O. Box 1563
Beaufort, SC 29901

Re: Talley, Bettyann v. Jonas, Nancy

Dear Ms. Jonas:

This Court has received your notice of appeal. Please be advised that decisions of the Court of Appeals are reviewed by filing and serving a petition for writ of certiorari and appendix under Rule 226, SCACR. The serving and filing of a notice of appeal is not sufficient.

Further, this Court only reviews final decisions of the Court of Appeals. Rule 226(a), Aiken Speir, Inc. v. Henry, 326 S.C. 268, 486 S.E.2d 492 (1997)(the Supreme Court will only review final decisions of the Court of Appeals). Since it appears that the order you are seeking to review is not the final decision of the Court of Appeals in this matter, I ask that you please explain, within ten (10) days of the date of this letter, why this matter should not be dismissed.

Finally, your letter indicates that a $100.00 filing fee is going to be sent. Please be advised that we have not received this filing fee.

Very truly yours,

s/ Daniel E. Shearhouse
CLERK

DES/dmh
Cc: Ms. Bettyann L. Talley
The Honorable Kenneth A. Richstad

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

Appeal from Beaufort County
Court of Common Pleas

The Honorable Thomas Kemmerlin, Jr. Circuit Judge
by special appointment

Case No.; 99-CP-7-1567

(U.S. District Court of South Carolina)
C/A No.; 9:00-0612-08AJ

Nancy D. Jonas,.....Appellant
v.
Bettyann L. Talley,.....Respondent.

APPELLEE'S INITIAL BRIEF

Bettyann L. Talley
409 Wilshire Blvd.
Savannah, GA 31419-1335
(912) 925-7804
Appellee pro se

June 19, 2000

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STATEMENT OF THE ISSUES ON APPEAL ..iv

STATEMENT OF THE CASE 1

ARGUMENT 1

TABLE OF AUTHORITIES

Statutes Cited:

28 U.S.C. § 1446 1

STATEMENT OF THE ISSUES ON APPEAL

I. Whether the Appellant properly removed, or Could have removed, the action pending in the Magistrate Court for the County of Beaufort, State of South Carolina?

II. Whether the Order of the Magistrate Court of the County of Beaufort, State of South Carolina and Award dated September 13, 1999 should be affirmed?

STATEMENT OF THE CASE

This unfortunate case comes before this Honorable Court as an attempted appeal from a judgment from the Magistrate Court for Beaufort County, South Carolina. An appeal was taken from that judgment by he Appellant in this case. The Appellant failed to appeal before a hearing scheduled in the appeal on February 24, 2000. Accordingly, a Special Master in Equity for the Court of Common Pleas for the County of Beaufort, State of South Carolina (Thomas Kemmerlin, Jr.) dismissed the Appellant's appeal in that Court. Subsequent to the Court of Common Pleas' dismissal of the Appellant's appeal in that Court, the Appellant filed this appeal.

In addition to filing an appeal in this Honorable Court, the Appellant also filed in the Supreme Court of the State of South Carolina. On June 12, 2000, the Supreme Court of South Carolina dismissed that appeal due to the Appellant's failure to pay the filing fee. (See, Appendix "A").

This Court has previously addressed the Appellant's appeal and has found it lacking. In this Honorable Court's Order of May 8, 2000, this Court found that the Appellant had not properly removed the originally-filed Magistrate Court action to Federal District Court. Accordingly, the Court found that the Appellant's argument asserted jurisdiction over her initial appeal the Magistrate Court's Order was without merit. (See, Appendix "B").

ARGUMENT

The issues in this case have already been effectively decided. First, the Appellant simply did not properly remove the underlying Magistrate Court case between the parties. As this Court noted in its May 8, 2000 Order, the Appellant did not attempt to remove the case until several months after the Magistrate's September 13, 1999 hearing on the action....". According to 28 U.S.C. § 1446, a notice of removal of a civil action or proceeding must be filed within thirty days after service of the Defendant with the original proceeding. In the instant case, the original proceeding in the Magistrate Court for the County of Beaufort, State of South Carolina was filed on June 15, 1999. (See, Appendix "C"). The Appellant, who was of course the Defendant in the Magistrate Court action, filed an answer to that complaint on August 12, 1999. (See, Appendix "D").

Following a hearing in the Magistrate Court on September 13, 1999, the Magistrate Court (G. Brown, presiding) awarded the Appellee a judgment of recovery of $616.00. Following that award and judgment, the Appellant in this appeal filed a notice of Appeal to the Court of Common Pleas on October 13, 1999 (See, Appendix "E"). Following the filing of this Notice of Appeal, the Special Master in Equity, for the County of Beaufort (Thomas Kemmerlin, Jr.) scheduled a hearing in the appeal (See, Appendix "F"). The hearing was scheduled for February 24, 2000 at 9:30 a.m. However, the Appellant failed to appear for that hearing, and the Special Master dismissed her appeal and affirmed the judgment of the Magistrate Court in favor of the Appellee.

On February 23, 2000, the Appellant in this action filed a Notice of Removal to the United States District Court for the District of South Carolina (See, Appendix "G"). This notice of removal was filed after the Appellant had answered the Magistrate Court action, after the Appellant had appeared at a hearing and argued her case to the Magistrate Court, after the

Appellant filed an appeal of the Magistrate's Order, and, finally, after the Appellant failed to appear at her appeal in the Court of Common Pleas. Pursuant to 28 U.S.C. § 1446, the Appellant's time for removal had long since passed, and her attempt to remove the case on February 23, 2000 was certainly outside the thirty (30) day window set by 28 U.S.C. § 1446.

In addition to failing to comply with federal procedure governing removal, the Appellant simply had no right to remove the case. The only asserted basis for jurisdiction of the United States District Court for the District of South Carolina was diversity jurisdiction. The Federal Courts only have diversity jurisdictions in matters involving a minimum of $75,000. As apparent from the Appellee's complaint originally filed in the Magistrate Court for Beaufort County, the amount in controversy in this case was only $616.00. Accordingly, even if the Appellant had properly followed procedure for removal, she had no right to remove the case, as the Federal Court had no jurisdiction over the case.

Accordingly, the Appellant's appeal should be dismissed and the Order any judgment of the Magistrate Court should be affirmed.

Respectfully submitted this 19th day of June, 2000.

s/ Bettyann L. Talley, Pro Se
409 Wilshire Boulevard
Savannah, GA 31419-1335
(912) 925-7804

The South Carolina Court of Appeals

Kenneth A. Richstad, Clerk
Ida R. Carson, Deputy Clerk

Post Office Box 11629
Columbia, S.C. 29211
(803) 734-1890

June 21, 2000

Certified 7099 3400 0011 0563 5197
Bettyann L. Talley
409 Wilshire Blvd.
Savannah, GA 31419

Re: Talley, Betty v. Jonas, Nancy

Dear Ms. Talley:

We are in receipt of your Appellee's Initial Brief in the above-entitled matter.

Please be advised that it will be necessary for you to provide the Court with Proof of Service showing that the brief has been served of Appellant pursuant to Rule 208 of the South Carolina Appellant Court Rules. This information must be received on or before July 3, 2000.

Very truly yours,
s/ Kenneth A. Richstad
CLERK

KAR/ab
Cc: Nancy D. Jonas

TRANSCRIPT OF JUDGMENT

State of South Carolina
County of Beaufort

Civil Case No. 9900825

Names of Parties against whom Judgments have been obtained:

Attorney

Jonas, Nancy D
202 Tennis Villas/POB 1563
Fripp Island SC 29901-0000
Defendant(s)

Name of Parties in whose favor Judgments have been obtained:

Attorney

Talley, Bettyann L
409 Wilshire Blvd
Savannah, GA 31419-0000
Plaintiff(s)

Damages and Costs

Amount of Judgment	$616.00
Costs:	
Magistrate's Costs	$ 30.00
Service of Papers	$ 10.00
Disbursements	$
Total Costs	$40.00
Date of Judgment: 09/13/99	
Total amount of judgment costs and disbursements	$656.00

The issues in this action were tried in the magistrate's court before MAGISTRATE FOR BEAUFORT COUNTY in a jury/non-jury proceeding, on the 13th day of SEPTEMBER, 2000; at which time, a verdict for the relief as states below:

in addition to costs in the amount of $40.00.

It is adjudged that the plaintiff, TALLEY, BETTYANN L recover from the defendant, JONAS, NANCY D the amount of $616.00, plus costs in the amount of $40.00, and /or relief as stated below:

Dated 9-13-00

s/ ASD
Andrew Scott Dudley, Jr.
Magistrate

OFFICE OF THE SHERIFF

(Seal) Beaufort County

P.O. Box 1758

Beaufort, South Carolina 29901

Area Code (843)

Sheriff	470-3200
Chief Deputy	470-3192
Criminal Records	470-3186
Civil Records	470-3188
Fax #	470-3187

P.J. Tanner
Sheriff

October 3, 2000

Nancy Jonas
Post Office 1563
Fripp Island, South Carolina 29901

Re: Bettyann L. Talley vs. Nancy Jonas
Amount of Judgment: $736.30

A judgment has been filed against you with the Clerk of Court for Beaufort County in the above referenced matter and the Execution Against Property has been forwarded to this office.

The South Carolina Code of Laws, 1976, Chapter 39, Section 15-39-10 through 15-39-150, in part, orders the Sheriff to levy on sufficient amount of the Defendant's equity in personal property or real estate to satisfy the judgment subject to prior liens.

Failure to contact this office within ten days of the

date of this letter with voluntary payment may result in additional interest, cost of levy, moving, storage and advertisement of sale. **PERSONAL OR BUSINESS CHECK NOT ACCEPTED.**

This is the only notice you will receive before levy.

Sincerely,
s/ Hope Cooper
Hope Cooper
Administrative Technician

s/ Michael M. Hatfield
Michael M. Hatfield
Chief Deputy

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

March 16, 2001

Ms. Nancy D. Jonas
P.O. Box 1563
Beaufort, SC 29901

Re: Nancy D. Jonas
v. Bettyann L. Talley
No. 00-1437

Dear Ms. Jonas:

The Petition for a Writ of Certiorari in the above entitled Case was filed February 19, 2001 and placed on the docket March 15, 2001 as No. 00-1437.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

s/ William K. Suter, Clerk
by
s/ Gail B. Johnson
Assistant

Enclosures

SUPREME COURT OF THE UNITED STATES

Ms. Nancy D. Jonas
P.O. Box 1563
Beaufort, SC 29901

Re: Nancy D. Jonas
v. Bettyann L. Talley
No. 00-1437

Dear Ms. Jonas:

The Petition for a Writ of Certiorari in the above entitled Case was filed February 19, 2001 and placed on the docket March 15, 2001 as No. 00-1437.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

s/ William K. Suter, Clerk
by
s/ Gail B. Johnson
Assistant

Enclosures

NOTICE!

Betty Ann L. Talley Judgment
vs
Nancy D. Jonas

UNDER AND BY VIRTUE OF EXECUTION AGAINST PROPERTY

IN THE NAME OF NANCY D. JONAS I HAVE

THIS DAY LEVIED UPON THIS PROPERTY

AND UNLESS PAYMENTS IN THE AMOUNT OF

$1049.42 IS MADE TO ME IN THE SHERIFF'S OFFICE

NOT LATER THAN 5-20-04 I WILL ADVERTISE AND

SELL AS PROVIDED BY LAW.

DATED 5-13-04

SHERIFF OF BEAUFORT COUNTY

BY J. GURGANINES
DEPUTY SHERIFF

1990 PLY
4 DR
GRAY
785 HSN
VIN#
1P3XA5639LF895905

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Divisional Offices
Charleston, SC 29402
(843) 579-1401 Fax 679-1402

(Seal)

P.O. Box 10768
Greenville, SC 29603
(864) 241-2700 Fax 241-2711

P.O. Box 2317
Florence, SC 29503
(843) 676-3820 Fax 676-3831

OFFICE OF THE CLERK
901 Richland Street
Columbia, South Carolina 29201-2431
(803) 765- 5816 Fax (803) 765-5960

Larry W. Propes
Clerk of Court

September 16, 2004

Nancy D. Jonas
202 Tennis Villa Circle
Fripp, Island 29920

Dear Ms. Jonas:

I am returning to you your money order in the amount of $150.00 and the documents which you presented for filing. If you are attempting to remove a case from State Court you must provide a copy of the summons and complaint from the lower court.

Additionally, you reference case number 9:00-612-08, a case which is currently on appeal. If this is a new case based on the same legal issues as the above case, it would be necessary to attach the original summons and complaint to the Notice of Removal and the case would be given a new case number.

Sincerely,
s/ Larry W. Propes
Clerk of Court
by
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Divisional Offices

(Seal)

P.O. Box 835
Charleston, SC 29402
(843) 579-1401 Fax 579-1402

P.O. Box 10768
Greenville, SC 29603
(864) 241-2700 Fax 241-2711

P.O. Box 2317
Florence, SC 29503
(843) 676-3820 Fax 676-3831

LARRY W. PROPES
CLERK OF COURT

October 5, 2004

Nancy D. Jonas
P.O. Box 1563
Beaufort, SC 29901

Dear Ms. Jonas:

Enclosed please find you receipt for filing of a Notice of Removal. You did not provide sufficient copies to receive a return copy. You new civil action number is 9:04-CV-22442-08AJ. Please be sure to put this number on all future filings with this court related to **this** case.

Sincerely,
s/ Larry W. Propes
Clerk of Court

Court Name: District of South Carolina
Division: 2
Receipt number: SCX200001850
Cashier ID: ssanders
Transaction Date: 10/04/2004
Payer Name: Nancy D. Jonas

CIVIL FILING FEES
For: Nancy D. Jonas
Case/Party: D-SCX-9-04-CV-022442-008
Amount: $150.00

Money Order
Check/Money Order Num: 0684170903
Amt Tendered: $150.00

Total Due: $150.00
Total Tendered $150.00
Change Amt: $0.00

Larry W. Propes, Clerk Office of the Clerk
United States District Court
P.O. Box 1563
Charleston, S.C. 29402
(843) 579-1401

December 1, 2004

Elizabeth M. Smith
Clerk of Court
P.O. Box 1128
Beaufort, SC 299901

Re: C/A 9:04-22442-08AJ
Bettyann Talley v. Nancy D. Jonas

Dear Ms. Smith:

Pursuant to the Order of Magistrate Judge Robert S. Carr filed on November 10, 2004, the above captioned file is hereby remanded to your court.

Enclosed please find the Original file. I have enclosed a certified copy of the docket sheet and order of remand.

Please acknowledge receipt of this file by returning the extra copy of this letter.

If we can be of further assistance to you, please give us a call.

Sincerely,

LARRY W. PROPES, CLERK

By: s/ Catina C.Murray
Catina C. Murray
Deputy Clerk

Enclosures
Cc: file

TO: Attorneys of Record

File received this _____ day of December, 2004

By: _____, Deputy Clerk of Court, Court of Common Pleas,

_____ County

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Bettyann L. Talley,	)	C/A No. 9:00-612-08
Plaintiff,	)	C/A No. 9:00-22442-08AJ
v.	)	
	)	
Nancy D. Jonas	)	Motion to Recall Remand
Defendant.	)	
	)	

TO: JUDGES OF THE UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA CHARLESTON DIVISION

PLEASE TAKE NOTICE that the Defendant, Nancy D. Jonas, moves the Remand pursuant to the Order of the Honorable Robert S. Carr entered November 10, 2004 referenced by Clerk of Court's letter of Remand dated December 1, 2004 be recalled for the following reasons:

U.S. Magistrate Judge Robert S. Carr's Order dated November 10, 2004 was not served on the defendant, 28 U.S.C. § 636 (b)(1)(C). The Order dated March 10, 2000 was certified with return receipt (Z 721 705 243). 28 U.S.C. § 636 (b)(1)(C)(3) requires a magistrate's duties must not be inconsistent with the U.S. Constitution and the laws of the United States. The U.S. Constitution guarantees due process by the 14th Amendment where notice is indispensable. Article VI, U.S. Constitution, Supremacy Clause, states "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof,...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding. And all judicial Officers, both of the Unite States and of the several States, shall be

bound by oath or affirmation, to support this Constitution." Robert S. Carr, exceeded his authority as an Article I judge because separation of power is mandated. An Article I

28 U.S.C. § 636 provides that a U.S. Magistrate Judge may not involuntarily dismiss an action. Remand is considered dispositive and final. The U.S. Magistrate Judge judge may not assume powers reserved to an Article III judge of the U.S. District Court. Article III, U.S. Constitution, requires that the powers delegated to a federal magistrate by Congress, Article I, be limited to preserve the authority and integrity of Article III courts, United States v. Saunders, 641 F. 2d 659,663 (9th Cir. 1980); Horton v. State Street Bank & Trust Co., 590 F. 2d 403, 404 (1st Cir. 1979). Non-service interrupts the constitutional system and prevents a final determination and issuance of an enforceable court order which must derive from an Article III judge who ultimately remains responsible for the exercise or declination of a federal court's jurisdiction. Brock v. Heckler, 612 F. Supp.1348 (D.S.C. 1985); St. Joseph's Stockyards Co. v. U.S., 798 U.S. 38, 84 (1936). Justice Brandeis in his concurrence stated the Supreme Court in its governance of Article III courts must be able to decide *de novo* all questions of law, constitutional issues, and jurisdictional facts. The non-service deprived Article III judges of this constitutional duty.

Non-service is contrary to law. Errors become irrefutable. The 14th Amendment, U.S. Constitution and the laws of the United States including relevant case law are disregarded. Removal was timely according to 28 U.S.C. § 1446(b) which provides "a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy ... or other paper from which it may first be ascertained that the case is one which is or has become removeable," Heniford v. American Motors Sales Corporation, 471 F. Supp. 328 (D.S.C. 1979). There was no indication the District Court judge remanded *sua sponte*.

Issues include U.S. District Court Judge Blatt Jr.'s non-enforcement of the mandate of 28 U.S.C. § 1446(d) and ignoreing motion to enjoin state court proceedings. The case rests upon the judgment of the former Beaufort County Magistrate Judge George B. Brown (99-825) who was indicted for embezzling court funds raising the presumption that the judgment (99-825) is tainted. Removal was effectuated based upon numerous published articles and was grounded on 42 U.S.C. § 1983. Master-in-Equity, Special Circuit Judge defied federal law pursuant to 28 U.S.C. § 1446(d) after exclusive jurisdiction was transferred to federal court and was further based upon prejudicial *ex parte* remarks he directed along with his unlawful order by cover letter to Plaintiff Talley through the former Clerk of Court Gloria Williams. For purposes of Article III, there is a federal question whenever federal law is a potential ingredient of the litigation. Federal question jurisdiction exists whenever a federal issue is likely to be dispositive, Osborn v. Bank of the United States, 22 U.S. (9 Wheat) 247 (1824), Chief Justice John Marshall. The Constitution and federal law regulates the operation of the courts and a federal question is raised whether state courts have violated federal law regulating the jurisdiction and operation of the courts pursuant to 28 U.S.C. §1446(d). Previous issues are incorporated by reference. Plaintiff Talley waived all objections to procedural defects, 28 U.S.C. § 1447(c), In Re Shell Oil Co., 932 F. 2d 1523 (5th Cir. 1991). More recent court proceedings reflect a continuing lack of due process consideration and abuse of discretion justify removal to federal court and relevance of 42 U.S.C. § 1983.

Long v. Lockheed Missiles and Space Co., 783 F. Supp. 249 (D.S.C. 1992) Charleston Division, Chief Judge Hawkins, an Article III judge, held in this case that a motion to remand was a dispositive motion outside the power of a magistrate judge and that a motion to remand to state court is equivalent of a dismissal and thus is a 'dispositive motion'

outside the power of a magistrate judge. He also noted the Local Rules were bereft of guidance and authority. The U.S. Court of Appeals for the Fourth Circuit has let stand the Long opinion as that of the Fourth Circuit.

Finally, the case has two numbers, C/A No. 9:00-612-08AJ under which the case was removed to federal court on October 4, 2004 and C/A No. 22442 which was assigned by the Clerk's Office pursuant to the Motion for Clarification of jurisdiction and status of remand referencing U.S. District Judge Sol Blatt Jr.'s Order of Remand dated June 26, 2000. Remand was premature and subject to invalidation in consideration that Appeal of that Order was timely filed July 6, 2000 vesting exclusive jurisdiction with the U.S. Court of Appeals for the Fourth Circuit. There was no interruption to federal jurisdiction. Judge Blatt, Jr.'s dated July 21, 2000 noted that the U.S. Court of Appeals for the Fourth Circuit had jurisdiction after filing of the Appeal July 6, 2000 and requested that the Clerk of Court for Beaufort County return the file for transmittal to the Fourth Circuit. The case has never been properly remanded. Non-service of the Order of Remand filed November 10, 2004 invalidates Remand as a matter of law unless a certified receipt confirms service as done previously.

The Removal effectuated October 4, 2004 was associated with the substantive case, C/A No. 9:00-612-08AJ where ongoing constitutional and federal law issues related to 42 U.S.C. § 1983 were the subject matter jurisdiction of removal as opposed to the lawfulness of the premature Remand of Judge Blatt, Jr. by Order dated June 26, 2000 that prompted the Motion for Clarification, C/A No. 9:04-22442-08. U.S. Magistrate Judge Carr would not have the authority to render judgment on Orders of a District Court Judge. His Order and Recommendation relates to the Judgment (99-825) of the Beaufort County Magistrate Judge George B. Brown and subsequent historical judicial proceedings as detailed in the Removal and Complaint filed October 4 2004.

WHEREFORE, the defendant prays the Court will grant recall of remand and other relief as it may deem proper.

Respectfully submitted,

s/ Nancy D. Jonas

To: Beaufort County Magistrate Judge Darlene Smith
December 14, 2006

I hereby certify the information is true to best knowledge and belief.
Case of: Nancy D. Jonas, Petitioner v. Bettyann L. Talley, Respondent.

Application for: Bond Undertaking and Order pursuant to 28 U.S.C. 2101(f) in this case. If Bond is required, amount $1,500.

Law: 28 U.S.C. § 2101(f) states that application is to be made to the trial court (Case No. 9900825), Beaufort County Magistrate former Judge George B. Brown, Circuit Judge Thomas Kemmerlin, Jr.

Current Status: Petition for Writ of Certiorari denied December 6, 2006 by the Supreme Court of South Carolina. Petitioner intends to appeal to the Supreme Court of the United States within 90 days of December 6, 2006.

Money Judgment: Original $616.00 + costs $40.00. Petitioner believes the current amount is approximately $1,500.00.

Mrs. Talley claimed she was owed for typing fees. Her work was improperly done. Another typist was employed to complete the work for filing.

Signed: Nancy D. Jonas
Nancy D. Jonas
202 Tennis Villa Circle
Tel: (843) 838-9461

File Stamped:
WMS

Attachment: 28 U.S.C. § 2101(f)

In such a case in which a final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefore, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

State of South Carolina
County of Beaufort

In Magistrate's Court
Case No. 9900825

Nancy D. Jonas
202 Tennis Villa Circle
Fripp Island, SC 29920,
Petitioner.

v.

Bettyann L. Talley
409 Wilshire Blvd.
Savannah, GA 31419,
Respondent.

Petition for
Bond Undertaking and Order
28 U.S.C. § 2101(f)

Nancy D. Jonas, Petitioner, desires to give an undertaking for the purpose of: staying execution of Judgment in the above case.

---

as provided by Section 2101 (f) U.S. Code, in the amount of: $1,500.

We, the undersigned sureties, do hereby obligate ourselves, jointly and severally as follows:
Name : Nancy D. Jonas
Address: 202 Tennis Villa Circle
Fripp Island, SC 29920
Amount: $1,500
I declare under penalty that the foregoing is true and correct:

s/ Nancy D. Jonas
Nancy D. Jonas
(Signature of Surety)

Date: December 14, 2006

ORDER

The above undertaking by surety is hereby approved by this court and a stay of execution is hereby issued.

Dated: _____ By: _____

Darlene Smith

Magistrate Judge for Beaufort County

State of South Carolina	)	In the Magistrate's Court
	)	
County of Beaufort	)	Civil Action No. 99-CP-07-1567
	)	
	)	
Bettyann L. Talley,	)	
Plaintiff,	)	
v.	)	
	)	
Nancy D. Jonas,	)	
Defendant.	)	
	)	

Reference hearing held before the Honorable Curtis L. Coltrane, Master in Equity for Beaufort Carolina, at the Beaufort County Courthouse, 102 Ribaut Road, Beaufort, South Carolina on the 25th day of May, 2004.

Appearances:

Bettyann L. Talley, Plaintiff, Pro Se
409 Wilshire Blvd.
Savannah, Georgia 31419

Nancy D. Jonas, Defendant, Pro Se
Post Office Box 1563
Beaufort, South Carolina 29901

Reported By: Joanne B. McDonald, CVR
Office of the Master in Equity
Post Office Drawer 1228
Beaufort, South Carolina 29901

PROCEEDINGS:

COURT: This is a hearing on a Motion for Stay of Execution filed by Nancy D. Jonas, the Defendant in this case. Ms. Jonas?

MS. JONAS: Yes.

COURT : Ms. Jonas is present together with Ms. Talley, who is the Plaintiff. I have reviewed Ms. Jonas' Motion as well as the rest of the file. This is your Motion, Ms. Jonas.

MS. JONAS: Well, Your Honor, I think the first issue would be jurisdiction. The Execution may be premature in that remand has not been issued from the Federal Court.

COURT: On what case?

MS. JONAS: On this case. The Remand that was issued was recalled. And I don't believe I have – I have sent a motion to the U.S. District Court Judge in this matter asking for clarification. And the Court – I spoke to them yesterday. They are ordering the record from the records department of the Fourth Circuit.

COURT: There was nothing in –

MS. JONAS: I also –

COURT: I didn't see anything in here that indicated - The last thing in here that I saw was the Mandate of the Fourth Circuit which was filed in November of 2000. There was a Petition for Write of certiorari filed by you with the United States Supreme Court which was denied on May 14, 2001.

MS. JONAS: But the law that resulted in the dismissal at the Fourth Circuit level and the denial

at the Supreme Court level was based on federal law, a case known as Thermitron. And also the Federal Statute – It's a jurisdictional statute having to do with removal laws. It's 28 U.S.C. § 1446(c).

COURT: I understand that. But Judge Stilwell –

MS. JONAS: That's the basis – It was not based And, also,

COURT: Well, Judge Stilwell found that because your Motion was late –

MS. JONAS It was not.

COURT: That Judge –

MS. JONAS: That's an error. That's incorrect.

COURT: That is the law of this case at this time.

MS. JONAS: May I submit evidence to the contrary, please? I filed –

COURT: This is already in the file.

MS. JONAS: I'm just entering it on that point.

COURT: But –

MS. JONAS: And then I want to enter the fact that Judge Kemmerlin conducted the hearing without jurisdiction. A stay was in place, 1446(d), a proper filing of the Removal.

COURT: That's the precise issue that Judge Stilwell rules on and found that there was jurisdiction.

MS. JONAS: That was an improper finding. And if you'll review the evidence, you will see that it is properly filed. In fact, there is –

COURT: Well, ma'am, the problem is –

MS. JONAS: There was – There is an automatic stay.

COURT: Let me finish. Sit down; let me finish. Judge Kemmerlin filed his Order on the 24th or signed it on the 24th of February, 2000.

MS. JONAS: That's right.

COURT: You thereafter appealed to the South Carolina Court of Appeals.

MS. JONAS: That was only because the State Court would not relinquish jurisdiction. And I had to –

COURT: Judge Stilwell found that the State Court properly exercised jurisdiction. You then appealed to the South Carolina Supreme Court and you appeal for various reasons there failed.

MS. JONAS: One of the reasons was they said I had not submitted the hundred dollar filing fee, and if you'll review the record, you'll see a money order for a hundred dollars.

COURT: The problem, Ms. Jonas, is that you're asking me to ignore what the Courts that I'm responsible to answer to have already done. They've already rules on these issues. They've already ruled on these issues.

MS. JONAS: But what I'm saying is, that 1446(d) was in place. Their actions are without legal authority. The case was in Federal Court.

COURT: Well, Judge Stilwell's Order specifically says, and addresses 1446(d) and finds that jurisdiction was proper. I mean, that's what Judge Stilwell has already found.

MS. JONAS: The evidence is contrary to that.

COURT: Well, I can't –

MS. JONAS: I think those provide sufficient evidence to question whether or not somebody can execute on somebody's property.

COURT: But Judge Stilwell has already ruled on that. He points out that you –

MS. JONAS: He had no authority –

COURT: Wait a minute; let me finish.

MS. JONAS: Okay.

COURT: You need to let me finish speaking before you try to talk over me. Okay? Judge Stilwell, in his Order, points out that your claim is that you removed the case to Federal District Court on February 23rd, 2000, which is what your receipt that you've handed up shows. Okay. So, he had that before him; right? He knew that?

MS. JONAS: Right.

COURT: Judge Stilwell then points out that Judge Kemmerlin's Order was filed at some point after that, which we know to be the following day because that's what's in the file. Judge Stilwell then rules that your removal petition was late because the case had been filed some number of months prior to your filing of the removal petition.

MS. JONAS: Okay. The case in point is Henniford.

COURT: Please let me finish.

MS. JONAS: Okay, but there is a case that –

COURT: Ms. Jonas, please let me finish. Will you let me do that?

MS. JONAS: Okay, but you've made a point and I need to insert what is the correct law is.

COURT: You can do that when I'm finished. Okay? That's what the record is in this case right now. That's what the record is in this case right now. That's what Judge Stilwell did. You appealed it up to the Supreme Court. The Supreme Court did not reverse it. I am bound by this. I do not have the authority, even if I think Judge Stilwell's Order is dead wrong, to reverse it. I do not have that authority.

MS. JONAS: I'm not asking you to reverse his Order. What I'm asking you to reverse his Order. What I'm asking you to do is to hold the matter in abeyance while it's being decided. I have also ---

COURT: It's been decided, ma'am.

MS. JONAS: It's been decided incorrectly. Judge Stilwell had no authority to issue that Order. The matter, it was under Federal Jurisdiction. That Order is just like Judge Kemmerlin's Order. He does not have the authority to proceed in the light of the Stay that is in effect during the proceeding which is a Stay as a matter of law. It's not anything I ever applied for. And I have – Yesterday I filed a – I filed for the Supreme Court of our State to consider a quid

prohibition in this matter. I think there's enough evidence that the matter needs to be held in abeyance until this can be sorted out. The Federal Judge needs to issue a remand so that you have jurisdiction. The execution is without jurisdiction, and it's based on Judge Kemmerlin's Order which is – which he had no legal authority to issue.

COURT: Well, according to Judge Stilwell, he did.

MS. JONAS: Well, I'm saying that Judge Stilwell is also – if you notice, when Judge Stilwell issued that Order, the case was – is in Federal Court, 1446(d) applied.

COURT: Well, once again, Ms. Jonas, what you're asking me to do –

MS. JONAS: This was not based on State law. I just want the matter held in abeyance until this could be sorted out. I don't think that there is prima facie evidence to support execution.

COURT: Well, there is a judgment that is of record. The judgment is less than ten years old. The Order of Judgment, initially that of Judge Brown was appealed to the Court of Common Pleas.

MS. JONAS: May I speak?

COURT: And Judge Kemmerlin affirmed it. You then appealed that Order to the South Carolina Court of Appeals which affirmed it. You then appealed that Order to the South Carolina Supreme Court which affirmed it. I mean, frankly, ma'am, that's prima facie evidence of an existing, valid judgment in this State.

MS. JONAS: Judge Brown never reduced his Oral decision to a written, appealable order. That's an error. However, the

case proceeded on appeal with Judge Kemmerlin who had no jurisdiction. They totally ignored Federal jurisdiction. And that is a question. The question here is –

COURT: Well, Judge Blatt and the Fourth Circuit have found there was no Federal Jurisdiction.

MS. JONAS: Okay, but I have -- I have – I have – I submit that there was Federal Question Jurisdiction and Removal

Jurisdiction existed under the case law of Henniford which is a District of South Carolina case.

COURT: Isn't that exactly the opposite of what Judge Carr, Judge Blatt and the Fourth Circuit have already found. They have found there is no jurisdiction. I mean, isn't that the effect of their Orders?

MS. JONAS: Well, what they –

COURT: Yes or no.

MS. JONAS: No, what they proceeded on, was they did not look at Henniford. There are several –

COURT: They found that they did not have jurisdiction did they not?

MS. JONAS: Under Thermitron

COURT: Okay, but that's what they found; right?

MS. JONAS: Well, the law that they chose not to –

COURT: So, now in addition to ignoring the Order of Judge Stilwell, you also want me to ignore the Orders of Judge Carr, Judge Blatt and the Fourth Circuit Court of Appeals.

MS. JONAS: I'm not asking you to do that. I'm saying, until this matter is sorted out, I move for this matter to be held in abeyance.

COURT: Well, I think it has been sorted out.

MS. JONAS: I disagree. That's why I'm here is to argue under Henniford. I'm arguing under an invalid Order of Judge Kemmerlin. He had no jurisdiction. He made very inappropriate remarks which came to my attention on this directed to Mrs. Talley. Mrs. Talley's work does not support that kind of excessive –

COURT: But that's the matter that Judge Brown tried.

MS. JONAS: I think there could be a presumption that that finding was tainted because on February the 2nd, Judge Brown was indicted for embezzlement and ---

COURT: But had you ever met Judge Brown before you tried the case in front of him?

MS. JONAS: No.

COURT: To your knowledge, had Mrs. Talley ever met Judge Brown?

MS. JONAS: No.

COURT: You know, the mere fact that Judge Brown or the fact that Judge Brown was determined to have legal problems of his own isn't any evidence that he possessed any bias against you.

MS. JONAS: I think that you could say that he could be subject to influence. I think that he could be subject to make

an improper decision.

COURT: But what evidence do you have that Mrs. Talley influenced him in some way?

MS. JONAS: I don't think that Mrs. Talley influenced him.

COURT: Other than, you know, he ruled against you.

MS. JONAS: I don't think Mrs. Talley influenced Judge Brown. I think Judge Brown, on his own, was influenced.

COURT: By what though?

MS. JONAS: I just think that's true.

COURT: Well, ma'am, you've got to do better than that.

MS. JONAS: And he never reduced it – He never reduced it to a written, appealable order.

COURT: But that's an issue that you should have taken up with Judge Kemmerlin.

MS. JONAS: Well, the thing is – let me insert –

COURT: That was four years ago.

MS. JONAS: Well, let me insert the fact that Federal law, after a removal, you do not have to appear. It's under Steam Ship v. Tugman.

COURT: Judge Stilwell has ruled against you on that.

MS. JONAS: Well, he is a State Judge. He does not know Federal Jurisdiction and he does not know ---

COURT: And once again, Judge Carr, Judge Blatt and the Fourth Circuit found exactly the same thing.

MS. JONAS: Well, they found – their findings has to do with a certain tract of removal law; however, it's inappropriate -- Henniford applies to this case.

COURT: And by the way, The Supreme Court denied your Petition for Certiorari.

MS. JONAS: They denied it upon Thermitron grounds and upon 1446(c). It's automatic. It doesn't have anything to do with the merits of the case. All I'm asking for – In my presentation by requesting that the matter be held in abeyance pending the rulings of the – the matters pending before – a writ of prohibition pending before the Supreme Court of South Carolina that was filed yesterday. And for Judge Blatt to issue his remand if he decides that is proper. And I rest my case.

COURT: Okay. I, you know, as I said, I reviewed this entire file in advance of this hearing and what is before me is a judgment that was entered, that was appealed to Judge Kemmerlin, who affirmed it, and appealed on up through the state system, and has been affirmed. There is also evidence of Ms. Jonas' claim that South Carolina State Courts lack jurisdiction over this matter, --

MS. JONAS: At that time –

COURT: -- likewise it appears that the issue has been decided adverse to Ms. Jonas by Judge Carr, Judge Blatt, and the Fourth Circuit of Appeals. You know, I, with all due respect, ma'am, it looks like this matter has been sorted out.

MS. JONAS: I respectfully disagree.

COURT: That is certainly your right to do so. I do not see, with this record, what there is for me to do other than to frankly ignore the existing Orders in this case and give them no effect. I mean, that's I'm asking you to do.

MS. JONAS: No, I'm not. I'm asking you to hold the matter in abeyance until it can be determined what the legal status is of this case.

COURT: Well, I think that that has already been determined.

MS. JONAS: I don't agree with you.

COURT: I understand that you don't. I understand that you don't agree with me. I respectfully, ma'am, disagree with you. It appears to me that this case has been tried and appealed in both the State and Federal Courts and that both the State and Federal Courts have ruled against you. And that is just where it is. I don't believe that I am at liberty to ignore that.

MS. JONAS: I'm not asking you to ignore them, just that you hold the matter in abeyance until the State and Federal Courts can make rulings on what the legal status of the matter is. And I think, you know, there are substantial rights, property rights are considered substantial, fundamental due process issues under the Constitution.

COURT: That is correct.

MS. JONAS: And I think it would require – it could support consideration when it comes to a situation like this. It just – The evidence and the law does not support anything to the

contrary.

COURT: Well, I must respectfully disagree with you there. I think that the only evidence in this case is that it has been tried and it has been determined adverse to your interest.

MS. JONAS: Well, the Federal and the highest State Court is due to make a ruling on that, on the legal status of the case. And I would like you to defer consideration until they –

COURT: Well, ma'am, we're here because you wanted me to hear it right away.

MS. JONAS: I do; I do.

COURT: You can't have it both ways. You cannot demand –

MS. JONAS: I'm not asking you to retry the case –

COURT: Please let me finish. You can't demand an emergency hearing, and then insist that I not rule because you filed other things in other courts that I have to wait on.

MS. JONAS: Well, I think there are legal – I think there is a legal basis for you to issue a finding to hold the matter in abeyance until the highest State Court in the State rules on the matter, you know, on a writ of prohibition.

COURT: You know, the highest State Court has already ruled on this matter once.

MS. JONAS: They denied that. It was in Federal Court, but they said that I had not paid the fee, and there is proof in there that the hundred dollar fee has been paid.

COURT: Whether or not –

MS. JONAS: And you'll notice that Chief Justice Toal's – That was the basis for that.

COURT: I understand that. But once you pointed that out, you obviously did not go back to them to get them to change that Order, so I'm stuck with it.

MS. JONAS: Okay, the reason I didn't do that is really the way they were proceeding without jurisdiction to begin with. I was being forced into State Courts when I was in Federal Court to protect my interest. And that's improper. It was improper under Federal law.

COURT: Well, every Court that's looked at it, including the Federal Courts have disagreed with you.

MS. JONAS: Well, I should like the matter held in abeyance. I don't want you to be in the position I'm not asking you to overrule the Fourth Circuit or any other Courts. Judge Stilwell – I just – It needs to be sorted out. And proper motions have been filed to determine the legal status, and I would like the matter held in abeyance until that determination, until you receive your orders.

COURT: Well, I don't know that I'm going to receive any additional orders other than the ones I've got. What I am going to do is this Ms. Jonas. I'm going to deny your Motion. I think that the case has been tried, and that if there is a reason to undo or not give effect to what has been done, then it is up to a higher Court than me to do it. I mean, --

MS. JONAS: I think you should hold the matter in abeyance and not sell my property until a determination can be made. I do want to state that I will appeal it.

COURT: I understand. I will send out a written Order.

MS. JONAS: Thank you. May I have leave to go?

COURT: Certainly.

MS. JONAS: Thank you.

(WHEREUPON, the hearing was concluded.)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CERTIFICATE

I, Joanne B. McDonald, Certified Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the foregoing Twenty (20) Pages of typewritten testimony were taken down by me, then reduced to transcript with computer-aided transcription; that the same is a true, correct and complete of the proceedings as stated in the caption.

I further certify that I am not of kin nor counsel to any of the parties hereto and, further, that I have no interest whatsoever in the outcome of said proceedings.

SO WITNESS MY HAND AND SEAL this 22ND day of October, 2004.

s/ Joanne B. McDonald

Notary Public/Court Reporter
My Commission Expires: September 25, 2012

State of South Carolina	)	In the Magistrate's Court
	)	
County of Beaufort	)	Case Number 9900825
	)	
	)	
Bettyann L. Talley,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
Nancy D. Jonas,	)	
Defendant.	)	
	)	

Transcript of hearing February 12, 2007,
10 a.m., before Beaufort County
Magistrate Judge Darlene R. Smith

Judge Miss Jonas and Miss Talley ...You're Miss Talley?

Talley Yes

Judge You're Miss Jonas?

Jonas Yes

Judge All right. Miss Jonas, you have filed a motion for bond, undertaking an order pursuant to 28 U.S.C. § 2101(f) in civil case, um, requesting a bond of of $1,500.00 because you have filed an appeal – or are going to file an appeal – with the U.S. Supreme Court. Is that correct?

Jonas Yes, your honor.

Judge O.K. In looking back through your file that you mailed us, copies of all your, um...that the circuit court has already denied the motion for stay of execution.

Jonas Well, actually, uh, you're the trial court and under 2101(f) I'm to make this application for a stay during .... The period to prepare my papers, the ninety-day period.

and actually in his chambers.

Judge Without the other party present, so it's … it's – if she wants to contest it, that's not legal and binding because you shouldn't have had a hearing with the judge without all parties present.

Jonas Well, I did the same thing with Judge Brown, uh, entertaining a stay.

Judge And I don't do things like that, ma'am. So

Jonas O.K. Um, this was actually …

Judge And I'm not saying that what they did was right or wrong. I'm saying that it … it was inappropriate for you to have an audience privately with the judge without the other party present.

Jonas Well, I did it only because they invited me into their chambers and because they – this was the form that they [inaudible] up, and Judge Brown, on one occasion, signed it in another case and …

Judge I'm not going to sign it, Miss Jonas. O.K? Thank you.

Jonas And the other alternative I have is, if the trial court, if you deny it – if the trial court denies it, then I, um, send this application to a justice of the Supreme Court. That's the next step.

Judge Well. Or either the … the South Carolina Supreme Court is the last one who made the ruling, correct?

Jonas They … they denied certiorari.

Judge O.K.

Jonas So I then have ninety days from December the 6th, which is March the 5th, to present a brief for certiorari.

Judge Yes, ma'am. And I don't have a problem with you filing with them and asking them to stay the execution.

Jonas Well, that's the procedure that the … that the statute, the federal law, requires – the trial court,

if you deny it, I have exhausted all state, um …

Judge Avenues. Yes, ma'am.

Jonas avenues. And that's what they require.

Judge Yes, ma'am.

Jonas Then I am … the next step is to make an application to a circuit justice.

Judge O.K.

Jonas … the fourth circuit.

Judge All right.

Jonas That's what the law says.

Judge Thank you, ma'am.

Jonas All righty.

Judge That's it. Thank you.

INVOICE

Ms. Lee Perry

Post Office Box 1285, Beaufort, South Carolina 29901-1285
843-521-4722

March 13, 2007

Ms. Nancy D. Jonas

Transcript of Hearing, 5 pages	$25.00
Beaufort County Magistrate's Court,	Pd.
Case Number 9900825	LP